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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* REINHARD P. KLEMM and SHMUEL SHAFFER

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Appeal 2017-006682  
Application 13/789,160<sup>1</sup>  
Technology Center 3600

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Before ST. JOHN COURTENAY III, LARRY J. HUME, and  
JOYCE CRAIG, *Administrative Patent Judges*.

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 25–45, which are all of the claims pending in this application. Claims 1–24 are cancelled. Final Act. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> According to Appellants, the real party in interest is Avaya, Inc. App. Br. 2.

## INVENTION

Appellants' application relates to providing customer service and particularly to a system and method for providing personalized customer service utilizing contact center technology. Spec. ¶ 3. Claim 25 is illustrative of the appealed subject matter and reads as follows:

25. A system for customized routing of a customer service request to an agent terminal of an enterprise, comprising:
- a memory device storing executable instructions, and
  - a processor in communication with the memory device,
- wherein the processor when executing the executable instructions:
- receives the customer service request from a user terminal, the user terminal associated with a user;
  - determines if information related to preferences of the associated user is available based at least partially on user defined permissions stored in a memory of the user terminal;
  - retrieves first user data from one or more social media sources as permitted by user defined access rights stored in the memory of the user terminal;
  - retrieves preference data about the associated user stored in the memory of the user terminal;
  - selects one agent terminal from among a plurality of agent terminals of the enterprise based at least in part on the first user data and the preference data; and
  - establishes a communication session between the one agent terminal and the user terminal.

## REJECTIONS

Claims 25–45 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception to patentable subject matter, without significantly more. Final Act. 3–6.

Claims 33 and 43 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Final Act. 6–7.

Claims 25–28, 31–38, and 41–45 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kumar et al. (US 2010/0027778 A1; published Feb. 4, 2010) (“Kumar”) and Schoeneberger et al. (US 2004/0141508 A1; July 22, 2004) (“Schoeneberger”). Final Act. 8–18.

Claims 29 and 39 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kumar, Schoeneberger, and Lenard (US 7,023,980 B2; April 4, 2006). Final Act. 18–19.

Claims 30 and 40 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kumar, Schoeneberger, and Brand et al. (US 7,088,813 B1; Aug. 8, 2006). Final Act. 20–21.

#### ANALYSIS

##### *Rejection of Claims 33 and 43 under 35 U.S.C. § 112, First Paragraph*

The Examiner rejected claims 33 and 43 for lack of written description because the Specification fails to support the recited limitation “determine a target response time to handle the received customer service request based on one or more of the first user data or the preference data.” Final Act. 7. In particular, the Examiner found the “Specification is silent regarding determining a target response time and how the first user data or preference data is used to determine a target response time.” *Id.*

Appellants contend the Examiner erred because the disputed “target response time” limitation is supported by paragraph 68 of the Specification. App. Br. 23; Reply Br. 4. We agree. Paragraph 68 specifically describes that the social media manager may map the user’s data to actions such as a response time. Spec. ¶ 68. We agree with Appellants that such disclosure is

sufficient to show possession at the time of invention of a target response time. *See* Reply Br. 4.

Accordingly, we do not sustain the Examiner’s rejection of claims 33 and 43 under 35 U.S.C. § 112, first paragraph, for lack of written description.

*Rejection of Claims 25–45 under 35 U.S.C. § 101*

With regard to whether the claims are directed to patentable subject matter, Appellants contend the Examiner erred in concluding the claims are directed to an abstract idea without significantly more. App. Br. 12.

In determining whether a claim falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 76–77 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356.

If the claim is “directed to” a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2355. This is a search for an “inventive concept”—an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.* (internal quotations and citation omitted).

In step one of the *Alice* analysis, the Examiner concluded claims 25–45 are directed to comparing new and stored information and using rules to

identify options (citing *Smartgene*) and using categories to organize, store and transmit information (citing *Cyberfone*) and, thus, to an abstract idea. Final Act. 3–4; *Cyberfone Sys., LLC v. CNN Interactive Group, Inc.*, 558 F. App’x 988, 992 (Fed. Cir. 2014) (nonprecedential); *SmartGene, Inc. v. Adv. Bio. Labs. SA*, 555 F. App’x 950 (Fed. Cir. 2014) (nonprecedential).

Appellants contend the Examiner should have performed streamlined analysis of the claims because they “clearly do not seek to tie up any judicial exception such that others cannot practice that exception.” App. Br. 12.

We are not persuaded that the claims should have been subject to streamlined analysis. Section 1(B)(3) of the 2014 Interim Guidance on Patent Subject Matter Eligibility<sup>2</sup> is available to the Examiner as a discretionary streamlined § 101 *Alice* analysis. Section 1(B)(3) is explicit in that “if there is doubt as to whether the applicant is effectively seeking coverage for a judicial exception itself, the full analysis should be conducted.” The Examiner choosing to perform a full § 101 *Alice* analysis is not an error.

We are also not persuaded by Appellants’ argument that the claims do not preempt all ways of providing customized service to a user. *See* App. Br. 13. Preemption is not the sole test for patent eligibility, and any questions on preemption in the instant case have been resolved by the Examiner’s *Alice* analysis. As our reviewing court has explained, “questions on preemption are inherent in and resolved by the § 101 analysis,” and, although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir.

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<sup>2</sup> *See* MPEP § 2106.06, Streamlined Analysis [R-08.2017].

2015); *cf. OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

Appellants next contend the Examiner improperly considered claim 25 at a high level of abstraction and ignored the specifically recited features of relying on user-specific access rights to determine what social media information can be retrieved and used to select an appropriate agent when establishing a connection between a user device and an agent terminal. App. Br. 14 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016)). Appellants argue that, when considered at a permissible level of abstraction, claim 25 as a whole is unlike any abstract idea previously identified as patent-ineligible and, thus, is directed to patent-eligible subject matter. *Id.* at 15.

We disagree that the Examiner’s § 101 analysis is incomplete, overly general, untethered from claim language, or otherwise flawed. All of the functions recited in claim 25 relate to receiving information and selecting a terminal in the service of establishing a communication session between an agent and a user terminal. The Examiner correctly concluded that concepts relating to the collection of data (such as receiving a customer service request; determining user defined permissions; retrieving user data, retrieving preference data) and the use of the collected data in combination with rules (such as using first user data/permissions and preference data) in decision making (such as selecting one agent terminal from among a plurality of terminals; establishing a communication session between agent and user) are abstract. *See* Ans. 3.

We agree with the Examiner's conclusion that claim 25 is directed to an abstract idea similar to that identified in *CyberSource* where information was obtained and used to make determinations. *Ans. 3*. In *Cyberfone*, the Federal Circuit held that "using categories to organize, store, and transmit information is well-established," and "the well-known concept of categorical data storage, *i.e.*, the idea of collecting information in classified form, then separating and transmitting that information according to its classification, is an abstract idea that is not patent-eligible." *Cyberfone*, 558 F. App'x at 992. Here, as in *Cyberfone*, information is "received" and "retrieved" (collected), and it is "determined if information relate[s] to preferences" (classified or organized).

We also discern no error in the Examiner's reliance on *SmartGene*. In *SmartGene*, the Federal Circuit concluded claims were patent-ineligible because they did "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." *SmartGene*, 555 F. App'x at 954. In the instant case, the recited "system for customized routing of a customer service request to an agent terminal" is nothing more than data used in an algorithm process that uses a central system (*i.e.*, "processor") to make determinations on the data using rule-based processes. The claims at issue in *SmartGene* relied upon "expert rules" for "'evaluating and selecting' from a stored 'plurality of different therapeutic treatment regimens.'" *SmartGene*, 555 F. App'x at 955. The "expert rules" in *SmartGene* are analogous to the "user defined permissions stored in a memory of the user terminal" used to retrieve preference data and select an agent terminal in claim 25.

Moreover, claims directed to data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016).

For these reasons, we are not persuaded the Examiner erred in concluding claim 25 is directed to an abstract idea.

Turning to step two of the *Alice* analysis, we are not persuaded by Appellants’ arguments that claim 25 recites more than the abstract concept of “a certain method of comparing new and stored information and using rules to identify options and using categories to organize, store and transmit information.” *Id.* at 16–17 (citing *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)). Appellants argue claim 25 recites a combination of elements that imposes meaningful limits so that claim 25 recites a specific application of a system for selecting a particular agent terminal for a user with which to be connected. *Id.* at 17. Specifically, Appellants argue that the features recited in claim 25, when considered in combination, are directed to a system’s adaptive process to select an agent’s terminal and to establish a communication session between that agent terminal and a user based on specific user-related information. *Id.* at 16.

We are not persuaded. In *Bascom*, the Federal Circuit held that an inventive concept may be found in the nonconventional and nongeneric

arrangement of the additional elements. *Bascom*, 827 F.3d at 1350. Here, Appellants have not persuasively explained how claim 25 recites such a nonconventional and nongeneric arrangement of additional elements. The Specification describes the recited processor, memory, and terminals in generic terms. *See, e.g.*, Spec. ¶ 38 (“processor 120 may include any general purpose processor”); Spec. ¶ 93 (“In general, any device(s) or means capable of implementing the methodology illustrated herein can be used to implement the various aspects of this present invention.”).

Nor have Appellants persuasively explained how the specific elements and steps recited in claim 25 improve the functioning of a computer or any other technology. Claim 25 recites the abstract idea of customizing routing of a customer service request to an agent terminal of an enterprise. The abstract idea includes the steps of receiving a request, determining if information related to preferences is available, retrieving user data, selecting an agent terminal based on the data. Claim 25 additionally recites in generic terms a “memory device,” and “a processor,” which are not sufficient to transform the nature of the claim into a patent-eligible application of the abstract idea. *See Alice*, 134 S. Ct. at 2355; *see also* Spec. ¶¶ 11, 23, 38 (describing memory and processor).

We also are not persuaded by Appellants’ argument that the Federal Circuit’s decision in *Trading Technologies International, Inc. v. CQG, Inc.*, 675 F. App’x 1001 (Fed. Cir. 2017) (nonprecedential), requires a legal conclusion of patent eligibility in this case. Reply Br. 2–3. In *Trading Technologies*, the Federal Circuit accepted the lower court’s findings, with respect to step two of *Alice*, that the claims provided “an inventive concept that allows traders to more efficiently and accurately place trades using this

electronic trading system.” 675 F. App’x at 1004. In further discussing the lower court’s opinion, the Federal Circuit noted “[t]he court distinguished this system from the routine or conventional use of computers or the Internet, and concluded that the specific structure and concordant functionality of the graphical user interface are removed from abstract ideas, as compared to conventional computer implementations of known procedures.” *Id.* Accordingly, the distinguishing feature under *Alice* step two for the claims in *Trading Technologies* was an advance in efficiency as compared to other computer processes. However, simply using a computer to gain efficiency over a manual process is not sufficient to distinguish a claim from a patent-ineligible abstract idea. *See OIP Techs.*, 788 F.3d at 1363 (“[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.”).

Accordingly, we sustain the Examiner’s § 101 rejection of claim 25, as well as claims 26–34 and 45, and grouped claims 35–44, similarly argued. *See App. Br.* 17–22.

*Rejection of Claims 1–25 under 35 U.S.C. § 103(a)*

With regard to claim 25, Appellants contend the cited portions of Kumar and Schoeneberger do not disclose the recited limitation “retrieves first user data from one or more social media sources as permitted by user defined access rights stored in the memory of the user terminal.” *App. Br.* 26. In particular, Appellants argue “[n]o suggestion is provided that preference data **stored** in a user terminal is retrieved.” *Reply Br.* 5.

The Examiner relied on Schoeneberger as teaching the disputed limitation. *Ans.* 6 (citing Schoeneberger ¶¶ 79, 90). The Examiner found

Schoeneberger teaches preference data is stored in a nuasis database 156.

Ans. 7.

We agree with Appellants that the cited portions of Schoeneberger do not teach or suggest that preference data stored in a user terminal is retrieved, as claim 25 requires. The nuasis database 156, cited by the Examiner, is not in a user terminal. *See* Schoeneberger, Fig. 2A, where in the preferred embodiment, the nuasis database 156 is not within the user terminal 102, but within HUB-A 115 of a contact center.

Therefore, we do not agree with the Examiner's conclusion that, under the broadest reasonable interpretation,<sup>3</sup> the scope of the recited term "stored in the memory of the user terminal" covers Schoeneberger's nuasis database, because HUB-A (Fig. 2A) is not part of a user terminal. *See* Ans. 7. The Examiner's interpretation of "stored in the memory of the user terminal" is inconsistent with the description in Appellants' Specification description of the user terminal's memory. *See* Spec. ¶¶ 79–80. Thus, the Examiner's interpretation of "stored in the memory of the user terminal" is overly broad.

For these reasons, on the record before us, we are persuaded the Examiner erred in finding the combination of Kumar and Schoeneberger teaches or suggests the disputed limitation. Accordingly, we do not sustain the 35 U.S.C. § 103(a) rejection of independent claim 25, or of independent claims 35 and 45, which recite commensurate limitations, or of dependent claims 26–34,<sup>4</sup> 36–44, which stand with independent claims 25 and 35.

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<sup>3</sup> We give contested claim limitations the broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

<sup>4</sup> As this issue is dispositive, we do not consider Appellants' other arguments regarding dependent claim 26 in deciding this appeal.

Accordingly, we reverse the 35 U.S.C. § 103(a) rejection of claims 25–45.

#### DECISION

We reverse the decision of the Examiner rejecting claims 33 and 43 for lack of written description under 35 U.S.C. § 112, first paragraph.

We affirm the decision of the Examiner rejecting claims 25–45 as directed to a judicial exception , without significantly more, under 35 U.S.C. § 101

We reverse the decision of the Examiner rejecting claims 25–45 for obviousness under 35 U.S.C. § 103(a).

Because we affirm at least one ground of rejection with respect to each claim on appeal, we affirm the Examiner’s decision rejecting claims 25–45. *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)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED