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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL MONTANO

Appeal 2017-006886¹
Application 14/061,745²
Technology Center 3600

Before HUBERT C. LORIN, NINA L. MEDLOCK, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–19. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellant’s Appeal Brief (“App. Br.,” filed November 7, 2016) and Reply Brief (“Reply Br.,” filed March 22, 2017), and the Examiner’s Answer (“Ans.,” mailed January 26, 2017), Advisory Action (“Adv. Act.,” mailed June 17, 2016), and Final Office Action (“Final Act.,” mailed December 4, 2015).

² Appellant identifies ReviewBuzz Inc. as the real party in interest. App. Br. 2.

CLAIMED INVENTION

Appellant's claimed invention relates "to obtaining and utilizing online customer service reviews" and more particularly "to requesting and utilizing online customer service reviews for an individual employee of a service provider" (Spec. ¶ 1).

Claims 1, 11, and 17 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of obtaining online customer service reviews for a plurality of individual employees of a plurality of service providers, comprising the steps of:

receiving a plurality of online customer service reviews of the plurality of individual employees of the plurality of service providers based on customer service received from the plurality of individual employees;

identifying the associated service provider of the plurality of service providers and the associated individual employee of the plurality of individual employees in each of the received plurality of online customer service reviews;

matching, using a computer with a processor and a memory, the identified service provider and individual employee in the received plurality of online customer service reviews with a list of service providers and individual employees; and

transmitting the online customer service review to the matched service provider.

REJECTIONS

Claims 1–19 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1–7 and 9–19 are rejected under 35 U.S.C. § 102(b) as anticipated by Black (US 2011/0218930 A1, pub. Sept. 8, 2011).

Claim 8 is rejected under 35 U.S.C. § 103(a) as unpatentable over Black and Graham (US 2007/0150537 A1, pub. June 28, 2007).

ANALYSIS

Patent-Ineligible Subject Matter

Appellant argues claims 1–19 as a group (App. Br. 7–14; *see also*, Reply Br. 4–5). We select independent claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 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).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena,

or abstract ideas.” *Mayo*, 566 U.S. at 71. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

Here, in rejecting the pending claims under 35 U.S.C. § 101, the Examiner determined that “[c]laims 1–19 are directed to an abstract idea of obtaining online customer service reviews, [and] specifically, directed towards receiving online customer reviews and matching the online customer reviews with the service provider and the employee of the service provider” (Final Act. 3); and that the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception itself because “[t]he claim[s] recite[] generic computer elements (e.g. a computer, a server, customer device) which do not add a meaningful limitation to the **abstract idea** because they would be routine in any computer implementation” (*id.* at 4).

Appellant argues that the Examiner’s analysis “simply summarize[s] the entire claim at a high level of abstraction” (App. Br. 8); and Appellant charges that the Examiner has, thus, failed to comply with USPTO guidelines (*id.* at 8–12 (citing the USPTO’s 2014 Interim Guidance on Patent Subject Matter Eligibility, 79 Fed. Reg. 74618 (Dec. 16, 2014), and November 2, 2016 Memorandum to the Patent Examining Corps regarding “Recent Subject Matter Eligibility Decisions”³)).

³ Available at <https://www.uspto.gov/sites/default/files/documents/McRo-Bascom-Memo.pdf>

Appellant's argument is not persuasive at least because there is no requirement that the Examiner's formulation of an abstract idea must 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 specification, based on whether 'their character as a whole is directed to excluded subject matter.'" *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp.*, 790 F.3d at 1346).

Here, it is clear from the Specification, including the claim language, that the character of the claims, considered as a whole, is directed to an improvement to methods and systems for obtaining and utilizing online customer service reviews for an individual employee of a service provider (*see, e.g.*, Spec. Title ("SYSTEMS AND METHODS FOR OBTAINING AND UTILIZING ONLINE CUSTOMER SERVICE REVIEWS OF INDIVIDUAL EMPLOYEES"); ¶ 5 ("The embodiments described herein are directed to systems and methods for obtaining and utilizing online customer service reviews for an individual employee of a service provider such as a business."); ¶ 20 ("The embodiments described herein provide for an Internet-based system for obtaining and utilizing online customer service reviews for an individual employee of a service provider.")). As such, we see no legal difficulty with the Examiner's determination that the claims are directed to "obtaining online customer service reviews," and "specifically, directed towards receiving online customer reviews and matching the online customer reviews with the service provider and the employee of the service provider" (Final Act. 3).

Appellant next argues that the claims are not directed to an abstract idea because “[t]he claims of the present application improve upon the conventional technology of verifying the authenticity of customer feedback by claiming specific method of authenticating customer reviews” (App. Br. 11–12). But that argument is not persuasive at least because it is not commensurate with the claim language. Claim 1 does not recite “verifying” or “authenticating.”

We also are not persuaded of Examiner error by Appellant’s argument that “the claims do not preempt all ways of authenticating customer reviews; rather, they recite a specific, discrete implementation of authenticating customer reviews” (App. Br. 11).

There is no dispute that the Supreme Court has described “the concern that drives [the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption.” *Alice Corp.*, 134 S. Ct. at 2354. But, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 134 S. Ct. at 2354). “[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Turning to the second step of the *Mayo/Alice* framework, Appellant argues that “the claims do more than merely automate customer reviews, they in fact provide increased security and authentication of such reviews —

and this is all that is required under § 101” (App. Br. 13). According to Appellant, “an inventive concept can be found in the ordered combination of claim limitations that transform the alleged abstract idea of obtaining customer feedback into a particular, practical application authenticating customer feedback” (*id.* (citing *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016))). Yet, as discussed above, claim 1 does not recite any “authenticating” or “authentication”; as such, Appellant’s argument is not commensurate with the scope of the claims.⁴

Moreover, information collection and analysis, including when limited to particular content (e.g., customer feedback), is within the realm of abstract ideas. *See, e.g., Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“[W]e have treated collecting information, including when limited to particular content (which does not change its

⁴ We note that the Specification discloses an authentication feature (*see* Spec. ¶ 41 (“This authentication feature therefore provides an automatic verification of the review since it is tied to the mobile payment process, and may even be used to filter reviews based on whether they have been authenticated or not.”)). But that feature is not recited in the claims and, therefore, cannot be relied on to provide an inventive concept. *See Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) (“[T]he complexity of the implementing software or the level of detail in the specification does not transform a claim reciting only an abstract concept into a patent-eligible system or method.”); *see also Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1322 (Fed. Cir. 2016) (“The district court erred in relying on technological details set forth in the patent’s specification and not set forth in the claims to find an inventive concept.” (citing *Accenture*, 728 F.3d at 1345, and *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1346 (Fed. Cir. 2014))).

character as information), as within the realm of abstract ideas.”); *SAP America, Inc. v. Investpic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018) (“As many cases make clear, even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” (quoting *Elec. Power Grp.*, 830 F.3d at 1353, 1355 (citing cases))). The law also is clear that the mere recitation of a practical application for an abstract idea is insufficient to transform the abstract idea into a patent-eligible invention. *Cf. CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011) (“The Court [in *Parker v. Flook*, 437 U.S. 584 (1978)] rejected the notion that the recitation of a practical application for the calculation could alone make the invention patentable . . .”).

We conclude, as did the Examiner, that the only additional elements in claim 1, beyond the abstract idea itself, are the recited “computer with a processor and a memory” (Ans. 5). The Examiner determined that “the claim simply cites common inputs to the processor without further improving upon the processor or how a processor operates” (*id.*) — a determination that is fully consistent with the Specification.⁵

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 2–19, which fall with claim 1.

⁵ See Spec. ¶ 42 (“The system 700 includes a computer/server platform 701 including a processor 702 and memory 703 which operate to execute instructions, as known to one of skill in the art.”).

Anticipation

Independent Claim 1 and Dependent Claims 2–7, 9, and 10

We are persuaded by Appellant’s argument that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 102(b) at least because Black, on which the Examiner relies, does not disclose “identifying the associated service provider of the plurality of service providers and the associated individual employee of the plurality of individual employees in each of the received plurality of online customer service reviews” and “matching, using a computer with a processor and a memory, the identified service provider and individual employee in the received plurality of online customer service reviews with a list of service providers and individual employees,” as recited in claim 1 (App. Br. 15–17).

Responding to Appellant’s arguments in the Answer, the Examiner cites paragraphs 10 and 11 of Black as disclosing that “service providers can include (but [are] not limited to) doctors, hospitals, nurses, dentist[s] and the like” (Ans. 6). According to the Examiner, “[t]he individual occupations listed are individual employees and as such the invention of Black perform[s] matches to employees” (*id.*). The Examiner, thus, takes the position that the claimed “service providers and the associated individual employee” read on the service provider disclosed in Black. However, the Examiner has not pointed to any disclosure in Black of identifying and matching both (1) “service providers” *and* (2) “the associated individual employee,” as required by claim 1. The Examiner’s position that a particular service provider can be an individual employee does not address both aspects of the claim.

In view of the foregoing, we do not sustain the Examiner's rejection of claim 1 under 35 U.S.C. § 102(b). For the same reasons, we also do not sustain the Examiner's rejection of dependent claims 2–7, 9, and 10.

Independent Claim 11 and Dependent Claims 12–16

Independent claim 11 includes language substantially similar to the language of claim 1. Therefore, we do not sustain the Examiner's rejection under 35 U.S.C. § 102(b) of claim 11 and claims 12–16, which depend therefrom, for the same reasons set forth above with respect to claim 1.

Independent Claim 17 and Dependent Claims 18 and 19

Appellant's argument for independent claim 17 is the same as for claim 1 (App. Br. 16; Reply Br. 6). But that argument is not persuasive at least because it is not commensurate with the scope of claim 17. Claim 17 does not require identifying and matching a service provider and an individual employee. In fact, claim 17 does not require any matching whatsoever. In the absence of any other argument, the rejection of claims 17–19 under 35 U.S.C. § 102(b) is sustained.

Obviousness

Claim 8 ultimately depends from independent claim 1. The Examiner's rejection of dependent claim 8 is based on the same rationale with respect to Black applied in rejecting claim 1 under 35 U.S.C. § 102(b). *See* Final Act. 24–25. Therefore, we do not sustain the Examiner's rejection of dependent claim 8 under 35 U.S.C. § 103(a) for substantially the same reasons set forth above with respect to independent claim 1.

DECISION

The Examiner's rejection of claims 1–19 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejection of claims 1–7 and 9–16 under 35 U.S.C. § 102(b) is reversed.

The Examiner's rejection of claims 17–19 under 35 U.S.C. § 102(b) is affirmed.

The Examiner's rejection of claim 8 under 35 U.S.C. § 103(a) is reversed.

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