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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY A. YOUNG and
AMY ELIZABETH BERESKY

Appeal 2017-007293¹
Application 14/817,171
Technology Center 3600

Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1, 2, 4–10, and 12–16. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

The invention relates generally to “determining healthcare savings opportunities for individuals and the likelihood of achieving those savings via alternative engagement channels (or modalities) to optimize clinical (outreach) coaching opportunities.” Spec. ¶ 8.

¹ The Appellants identify CIGNA, Inc. as the real party in interest. Appeal Br. 2.

Claim 1 is illustrative:

1. A method of automatically generating, on a web interface, actionable areas related to specific modalities for targeted customer changes, the method being implemented on a computer system that includes one or more physical processors which, when executed, perform the method, the method comprising:

determining, by the computer system, a first potential cost savings associated with a first targeted change of a customer;

determining, by the computer system, a first probability of achieving a first goal that corresponds to the first targeted change when a first modality is used to engage the customer to assist the customer in achieving the first goal;

determining, by the computer system, a first score associated with the first modality and the first goal based on the first potential cost savings and the first probability;

determining, by the computer system, a second probability of achieving the first goal that corresponds to the first targeted change when a second modality is used to engage the customer to assist the customer in achieving the first goal, wherein the second modality is different than the first modality;

determining, by the computer system, a second score associated with the second modality and the first goal based on the first potential cost savings and the second probability;

selecting, by the computer system, based on a comparison of the first score, the second score, and one or more other scores associated with one or more other modalities, modalities for use in engaging the customer to assist the customer in achieving the first goal; and

generating, by the computer system, on a web interface, actionable areas related to the selected modalities for facilitating the first targeted change such that, responsive to the selected modalities comprising the first modality and the second modality, the actionable area related to the first modality and the actionable area related to the second modality are arranged on the web interface based on the first score and the second score, wherein an automated interactive session is caused to be activated for the customer upon detection of user interaction with at least a portion of one of the actionable areas.

The Examiner rejects claims 1, 2, 4–10, and 12–16 under 35 U.S.C. § 101 as directed to ineligible subject matter in the form of abstract ideas.

The Examiner rejects claims 1, 2, 4–10, and 12–16 under 35 U.S.C. § 103(a) as unpatentable over Kachnowski et al. (US 2012/0004924 A1, pub. Jan. 5, 2012) (“Kachnowski”), Morris et al. (US 8,694,300 B2, iss. Apr. 8, 2014) (“Morris”), and O’Shaughnessy et al. (US 8,223,940 B2, iss. July 17, 2012) (“O’Shaughnessy”).

We AFFIRM.

ANALYSIS

Principles of Law

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 implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (internal quotations and citation omitted).

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*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 76–78 (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 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in

petitioners’ application explain the basic concept of hedging, or protecting against risk.”); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (“Analyzing respondents’ claims according to the above statements from our cases, we think that a physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter.”); *Parker v. Flook*, 437 U.S. 584, 594–95 (1978) (“Respondent’s application simply provides a new and presumably better method for calculating alarm limit values.”); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972) (“They claimed a method for converting binary-coded decimal (BCD) numerals into pure binary numerals.”).

The patent-ineligible end of the spectrum includes fundamental economic practices, *Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611; mathematical formulas, *Parker*, 437 U.S. at 594–95; and basic tools of scientific and technological work, *Gottschalk*, 409 U.S. at 69. On the patent-eligible side of the spectrum are physical and chemical processes, such as curing rubber, *Diamond*, 450 U.S. at 184 n.7, “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores,” and a process for manufacturing flour, *Gottschalk*, 409 U.S. at 69.

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.*

In addition, the Federal Circuit has held that if a method can be performed by human thought alone, or by a human using pen and paper, it is merely an abstract idea and is not patent-eligible under § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”).

Claims involving 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).

Claims that recite an improvement to a particular computer technology have been found patent eligible. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (determining claims not abstract because they “focused on a specific asserted improvement in computer animation”).

Patentable subject matter

We are unpersuaded by the Appellants’ arguments of error in the Examiner’s rejection because the rejection is conclusory, and without “any evidence with regard to how the claimed invention as a whole is a well-understood, routine, conventional activity.” Appeal Br. 11–12; *see also* Reply Br. 4–5.

The Examiner states:

the claims are directed to a process for optimizing healthcare savings opportunities based on alternate communication channels to achieve a behavior change which is considered to be an abstract idea inasmuch as such activity is considered a method of organizing human behavior and an abstract idea of itself such as comparing new and stored information and using rules to identify options (*SmartGene*), collecting and comparing known information (*Classen*) and comparing data to determine a risk level (*Perkin-Elmer*) and organizing information through mathematical correlations.

Final Act. 3. The next paragraph explains how each limitation corresponds to one of the three cited cases. *Id.*; *see also* Answer 3–5. The rejection clearly articulates the analysis the Examiner applied.

We are unpersuaded by the Appellants’ argument that the Examiner failed to consider each claim as a whole when determining each is directed to an abstract idea. Appeal Br. 12–14; *see also* Reply Br. 5. Instead, the Examiner finds each claim as a whole can be performed mentally.

Answer 3. Even without evidence, thinking is recognized as a well-understood, routine, and conventional activity. *Versata Dev. Group, Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1331, 115 USPQ2d 1681, 1699 (Fed. Cir. 2015) (mentally arranging a hierarchy of groups, sorting information, eliminating less restrictive pricing information, and determining the price is a well-understood, routine, conventional activity).

We also are unpersuaded by the Appellants’ argument that the Examiner failed to consider each claim as a whole when determining each fails to recite “something more” that transforms each abstract idea into eligible subject matter. Appeal Br. 14–15; *see also* Reply Br. 5–7. Instead, the Examiner finds

[t]he elements of the instant process, when taken in ordered combination, together do not offer substantially more

than the sum of the functions of the elements when each is taken alone. That is, the elements involved in the recited process undertake their roles in performance of their activities according to their generic functionalities which are well-understood, routine and conventional. The elements together execute in routinely and conventionally accepted coordinated manners and interact with their partner elements to achieve an overall outcome which, similarly, is merely the combined and coordinated execution of generic computer functionalities which are well-understood, routine and conventional activities previously known to the industry.

Final Act. 6; *see also* Answer 7. The Examiner has clearly considered the claim as a whole.

We are not persuaded by the Appellants' arguments that the claims are "necessarily rooted in computer technology," because the claims generate a web interface. Appeal Br. 17; *see also id.* 18–20 (“an improvement to prior computer-generated web interfaces and computer systems (that facilitates targeted changes of a customer) by automatically generating, on a web interface, actionable areas (related to specific modalities for targeted customer changes) in a particular manner”), Reply Br. 8–11.

Instead, the Examiner finds the generating of the web interface with the determined information, is merely “displaying information/data from the previous analysis steps and is a post solution activity.” Final Act. 4–5. Indeed, the claims merely take a purely mental process of getting information and making determinations, and instructs one to implement each mental step “by the computer system.” The Federal Circuit has held that if a method can be performed by human thought alone, or by a human using pen and paper, it is merely an abstract idea and is not patent-eligible under § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir.

2011) (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”). Additionally, mental processes, e.g., making determinations, as recited in independent claims 1 and 9, remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *Id.* at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*, [409 U.S. 63 (1972)].”).

The Appellants argue the “claims address a business challenge that is particular to the Internet.” Appeal Br. 18; *see also* Reply Br. 10. We disagree, the invention is directed to “clinical outreach” programs to patients, in which “[h]ealth insurance providers are incentivized to conduct these types of outreach campaigns at least in part because keeping their customers healthy can help reduce claims and curb premium hikes, among other benefits.” Spec. ¶¶ 4–5. These are issues that pre-date, and do not depend upon, the Internet.

The Appellants argue the claimed invention relates to generating a web interface that improves user experience. Appeal Br. 18; *see also* Reply Br. 10. Yet, the claimed method and system merely display determined information, and do not alter the manner of displaying data on a web interface. *See, e.g.*, Spec. ¶ 89 (cited at Appeal Br. 3–4) (“a display that conveys the selected modality for facilitating the targeted change may be generated”).

The Appellants thus have not shown error in the rejection. For this reason, we sustain the rejection of claims 1, 2, 4–10, and 12–16 under 35 U.S.C. § 101.

Obviousness Rejection of Claims 1, 2, 5–10, and 13–16

The Appellants argue independent claims 1 and 9 together, so we select claim 1 as representative. Appeal Br. 20–21. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We are not persuaded by the Appellants’ argument that Kachnowski fails to disclose the claimed determining of probabilities of achieving a particular goal, because, according to the Appellants, Kachnowski is silent with regard to considering “particular goals.” Appeal Br. 21. Kachnowski discloses “patient response to specific types of contact may be measured so that modes of communication that provide an increased likelihood of impacting the behavior of a particular patient may be selected.” Kachnowski ¶ 5. The behavior of the patient is the “particular goal,” as claimed.

We are not persuaded by the Appellants’ argument that O’Shaughnessy discloses displaying an ordered list of selectable communication modes for communication with a particular party, but does not generate the claimed actionable areas based on the modalities’ scores. Appeal Br. 21; *see also* Reply Br. 14. According to the Examiner, Kachnowski discloses selecting modalities to assist the patient with a goal (Final Act. 13), and O’Shaughnessy merely displays these results in an ordered, selectable list, essentially as claimed (*id.* 17–18).

Because the Appellants have failed to demonstrate error in the Examiner’s obviousness rejection of independent claims 1 and 9, we sustain the rejection of these claims, as well as of dependent claims 2, 5–10, and 13–16 that were not argued separately. Appeal Br. 22.

Obviousness Rejection of Claims 4 and 12

We are unpersuaded by the Appellants' argument that Kachnowski fails to consider "multiple particular goals with respect to the same customer." Appeal Br. 22; *see also* Reply Br. 12–15. Kachnowski, however discloses "a mechanism by which to improve the intended behaviors expected of the recipient." Kachnowski ¶ 4. The plural behaviors are the multiple particular goals for the same customer. In addition, in rejecting claims 4 and 12, the Examiner relies on the "plurality of interventions" disclosed by Morris to meet this claim language. Final Act. 19–20 (emphasis omitted). Morris is thus a cumulative reference.

Because the Appellants have not shown error in the Examiner's rejection, we sustain the obviousness rejection of claims 4 and 12.

DECISION

We affirm the rejection of claims 1, 2, 4–10, and 12–16 under 35 U.S.C. § 101.

We affirm the rejections of claims 1, 2, 4–10, and 12–16 under 35 U.S.C. § 103(a).

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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