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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID SILVER, DARYLE S. FONG, JEFF KLEIN,
P. GARRETT GAUDINI, and ANDREW HORTON

Appeal 2017-007322
Application 12/349,859¹
Technology Center 3600

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 non-final rejection of claims 1–6 and 9–27, which are all of the claims pending in this application. Claims 7 and 8 previously have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is Camelot UK Bidco Limited. App. Br. 2.

INVENTION

Appellants' application relates to tools and techniques for providing information about online entities. Spec. 6. Claim 1 is illustrative of the appealed subject matter and reads as follows:

1. A system for providing information about online entities, the system comprising:

a brand notification computer system comprising a first processor and a first computer readable storage medium having encoded thereon a first set of instructions executable by the brand notification computer system, wherein, when executed by the first processor, the first set of instructions cause the first processor to:

identify a set of online content on a website having a corresponding siteowner, the siteowner comprising at least one of an entity that owns the website, an entity that maintains the website, and an entity that is responsible for the set of online content, the set of online content being identified by a uniform resource locator ("URL");

provide a user interface to facilitate interaction between the brand notification computer system and a first user, the first user comprising a brandowner associated with a brand, or a representative of the brandowner;

display, via the user interface, the set of online content for the first user;

receive, from the first user via the user interface, user input indicating that the set of online content improperly uses the brand;

determine, based at least in part on the user input indicating that the set of online content improperly uses the brand, that the set of online content includes an improper brand usage;

generate a brand notification that includes the determination that the set of online content includes an improper brand usage, wherein the brand notification comprises an identification of the URL, an identification of the brand, an identification of the

brandowner, and an indication of a category describing at least one activity that demonstrates how the set of online content improperly uses the brand, the brand notification being formatted with a structured markup language;

generate a brand notification feed comprising the brand notification provide the brand notification feed upon request from a brand notification client at a security vendor computer system; and

display, via the user interface, status information about the brand notification;

the security vendor computer system comprising a second processor and a second computer-readable storage medium having encoded thereon a second set of instructions executable by the security vendor computer system, wherein, when executed by the second processor, the second set of instructions cause the second processor to:

receive, at the brand notification client, a Java object requesting the brand notification feed from the brand notification computer system;

convert the Java object request into a brand notification request at the brand notification client;

transmit the brand notification request from the brand notification client for reception by the brand notification computer system;

receive, at the brand notification client, the brand notification feed from the brand notification computer system;

convert, at the brand notification client, the brand notification feed to a Java object response available to the security vendor computer system, the Java object response comprising information from the brand notification feed;

provide the Java object response, from the brand notification client, for use by the security vendor computer system;

publish, from the security vendor computer system and to a security client on a computer used by a second user, the second user comprising a subscriber to a security service hosted by the

security vendor, a notification that the URL is suspect, based at least in part on the information from the brand notification feed; receive, from the siteowner, information disputing the determination that the set of online content includes an improper brand usage; and

transmit, via the brand notification client software program, a dispute notification indicating that the siteowner disputes the determination that the set of online content includes an improper brand usage;

wherein the first set of instructions further causes the brand notification computer system to:

receive the dispute notification;

display, via the user interface, the dispute notification;

receive, from the first user via the user interface, user input indicating a status of the dispute;

update the brand notification, based at least in part on the user input indicating the status of the dispute;

generate an updated brand notification feed comprising the updated brand notification; and

provide the updated brand notification feed upon request from the brand notification client at the security vendor computer system.

REJECTIONS

Claims 1–6 and 9–27 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception to patent-eligible subject matter, without significantly more. Non-Final Act. 3.

Claim 1 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Krishnamurthy et al. (US 7,698,442 B1; issued Apr. 13, 2010) (“Krishnamurthy”), Dixon et al. (US 2006/0253458 A1; published Nov. 9, 2006) (“Dixon”), Rogers (US 2008/0162368 A1; published July 3,

2008), and Green et al. (US 2006/0106866 A1; May 18, 2006) (“Green”).
Non-Final Act. 9.

Claims 2–6 and 9–27 stand rejected under 35 U.S.C. § 103(a) as
unpatentable over the combination of Krishnamurthy, Dixon, and Green.
Non-Final Act. 16.

ANALYSIS

We have reviewed the Examiner’s rejections of claims 1–6 and 9–27
in light of Appellants’ arguments that the Examiner erred. We have
considered in this decision only those arguments Appellants actually raised
in the Briefs. Any other arguments Appellants could have made, but chose
not to make, in the Briefs are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellants’ arguments are not persuasive of error. We agree with and
adopt as our own the Examiner’s findings of facts and conclusions as set
forth in the Answer (Ans. 2–8) and in the Action from which this appeal was
taken (Non-Final Act. 9–30). We provide the following explanation for
emphasis.

Rejection of Claims 1–6 and 9–27 under 35 U.S.C. § 101

The Examiner concluded that claims 1–6 and 9–27 are directed to the
abstract idea of providing a forum to bring about a brand dispute, which is
an idea of itself and a certain method of organizing human activity. Non-
Final Act. 3. The Examiner further concluded the claim limitations do not
recite additional elements that amount to significantly more than the judicial
exception because the additional limitations simply describe the abstract
idea. *Id.* at 6–7.

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. 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).

Appellants first contend the Examiner failed to make a *prima facie* case of patent ineligibility because the Examiner incorrectly characterized Appellants’ claims. App. Br. 6–7.

We disagree. The Examiner satisfied the burden of establishing a *prima facie* case under 35 U.S.C. § 132 by setting forth a rejection in a sufficiently articulate and informative manner. *In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011). If the Examiner “adequately explain[s] the shortcomings . . . the burden shifts to the applicant to rebut the *prima facie* case with evidence and/or argument.” *Hyatt v. Dudas*, 492 F.3d 1365, 1370 (Fed. Cir. 2007). The Non-Final Office Action adequately explains the § 101 rejection. *See* Non-Final Act. 3–9. The Examiner’s statements satisfy § 132(a) because they apply the *Alice* analytical framework and apprise Appellants of the reasons for the § 101 rejection under that framework.

Appellants have not responded by alleging a failure to understand the rejection. To the contrary, Appellants clearly identify the abstract idea. *See, e.g.,* App. Br. 5.

Appellants further argue “merely pasting text from the Office’s § 101 Guidelines and citing Federal Circuit cases—without any explanation or analysis—does not equate to a showing or explanation sufficient to create a *prima facie* case of patent ineligibility or should not be considered responsive to Appellant’s evidence-supported assertions.” Reply Br. 2.

We disagree because the Examiner’s determination that the claims are directed to an abstract idea is consistent with the approach required by *Alice* and approved by our reviewing court in several subsequent decisions. The Federal Circuit has held that the “decisional mechanism” for determining whether a claim is directed to an abstract idea compares the claim to those claims previously found to have been directed to abstract ideas in other cases. *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) (“[T]he decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.”).

Here, that is precisely what the Examiner has done. In concluding the claims are directed to an abstract idea, the Examiner found Appellants’ claims

are similar to several examples of abstract ideas identified by the courts: 1) obtaining and comparing intangible data as in *CyberSource* (e.g. obtaining user input and brandowner identification of online content that allegedly uses his brand improperly, comparing this data to a siteowner’s information); and 2) arbitration as in *Comiskey* (e.g. disputing use of a brand, presenting information from opposing sides).

See Non-Final Office Action 7–9; Ans. 3–4; and *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.”); *see also In re Comiskey*, 554 F.3d 967, 979 (Fed. Cir. 2009) (“[M]ental processes—or processes of human thinking—standing alone are not patentable even if they have practical application.”). We discern no error in the Examiner’s analysis, and Appellants do not present any argument or explanation as to how the present claims differ from those found ineligible in the cases identified by the Examiner. Without such explanation, Appellants do not identify error in the Examiner's determination.

Applying the framework set forth in *Alice*, and as the first step of that analysis, we agree with the Examiner that claim 1 is directed to an abstract idea. Ans. 3. We agree with the Examiner that limitations directed to identifying the content, providing user input, and generating notifications and feeds regarding the alleged improper brand usage are directed to disputing the use of the brand. We also agree with the Examiner that limitations directed to having a vendor system publish a notification, receiving additional information regarding the dispute, and updating the status of the dispute are directed to allowing the brand owner to continue disputing the use of his brand. *See* Non-Final Office Action 3–7. Thus, we are not persuaded of error in the Examiner’s conclusion that claim 1 is directed to the abstract idea of “providing a forum to bring about a brand dispute.” *See* Non-Final Act. 3.

Moreover, each of independent claims 1, 2, and 23–27 requires in one form or another collecting, analyzing, and displaying data. App. Br. 20–22

(Claim 1). The steps recited in claim 1 are directed to collecting data (user input); analyzing the data (determining based on user input improper brand usage); and displaying brand notification information.

Abstract ideas include the concepts of collecting data, recognizing certain data within the collected data set, and storing the data in memory. *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). Additionally, the collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Electric Power*, 830 F.3d at 1353 (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). Similarly, “collecting, displaying, and manipulating data” is an abstract idea. *Intellectual Ventures I LLC v. Capital One Financial Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017).

In this regard, we agree with the Examiner that the steps of claim 1 are similar to the steps the Federal Circuit determined were patent ineligible in *Electric Power*. See Ans. 4. In *Electric Power*, the method claims at issue were directed to performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results. *Electric Power*, 830 F.3d at 1351–52. There, the Federal Circuit held that the claims were directed to an abstract idea because “[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results,

and not any particular assertedly inventive technology for performing those functions.” *Id.* at 1354.

Similarly here, claim 1 involves nothing more than collecting data, analyzing the data, and displaying status information based on the analyzed data—activities squarely within the realm of abstract ideas. *See id.* at 1353–54 (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as matters within the realm of abstract ideas).

Further, combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea . . . to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP*, 839 F.3d at 1094 (determining the pending claims were directed to a combination of abstract ideas).

We are not persuaded Appellants’ claims are similar to those found eligible in *McRO*. App. Br. 8 (citing *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)). In *McRO*, the Federal Circuit found the claims prevent preemption of all processes for achieving automated lip-synchronization of 3-D characters because the claims recite a rule with specific characteristics. 837 F.3d at 1315. Unlike in *McRO*, Appellants’ claims do not recite a rule-based improvement of a technological process. The claims in *McRO* were drawn to improvements in the operation of a computer at a task, rather than applying a computer system to perform generic data manipulation steps, as in Appellants’ claim 1. *See McRO*, 837 F.3d at 1314. Moreover, the *McRO* court explicitly

“recognized that ‘the absence of complete preemption does not demonstrate patent eligibility.’” *See McRO*, 837 F.3d at 1315 (quoting *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (“[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.”), *cert. denied*, 136 S. Ct. 701 (2015).

Because Appellants have not persuaded us the Examiner incorrectly analyzed the claims under *Alice* step 1, we proceed to the second step of the *Alice* inquiry.

In *Alice* step two, we find no inventive concept sufficient to overcome the abstract idea judicial exception ineligible for patenting. As the court explained in *Electric Power*, “merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Id.* at 1355.

There is no indication in the record that any specialized computer hardware or other “inventive” computer components are required in claim 1. Claim 1 merely employs a brand notification computer system comprising generic computer components to perform generic computer functions, i.e., collecting, storing, and processing information, which is not enough to transform an abstract idea into a patent-eligible invention. *See Non-Final Act. 7.*

Appellants argue claim 1 necessarily recites an “inventive concept” because the independent claims recite features that go beyond “providing a

forum to bring about a brand dispute.” App. Br. 8. Appellants argue, for example, that independent claims 1, 2, 23, and 24 recite features directed to providing a brand notification to a security vendor. *Id.*; *see also* Spec. ¶¶ 12, 14.

We are not persuaded the Examiner erred. We note that in step 2 of the *Alice* analysis, the question is not whether there are claim features that “go beyond” the abstract idea, as Appellants contend, but, rather, whether any additional elements provide an inventive concept (i.e., whether the additional elements amount to significantly more than the exception itself).

Appellants argue the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks. *Id.* at 9 (citing *DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245, 1257 (Fed. Cir. 2014)). Appellants argue this is so because the pending claims recite solutions to “online-specific problems.” *Id.* Appellants again point to the recited features directed to providing a brand notification to a security vendor so that the security vendor can notify its clients about brand misuse. *Id.*

We are not persuaded. Appellants have not persuasively explained how the claims at issue involve a technological solution that overcomes a specific challenge unique to the Internet. In *DDR Holdings*, the Federal Circuit held that claims “directed to systems and methods of generating a composite web page that combines certain visual elements of a ‘host’ website with content of a third-party merchant” contained the requisite inventive concept. 773 F.3d at 1248. The claims at issue involved a technological solution that overcame a specific challenge unique to the

Internet. *Id.* at 1259. This distinguished the claims at issue from those claims found unpatentable in earlier cases. *Id.*

Unlike the claims in *DDR Holdings*, Appellants' claims do not introduce a technical advance or improvement. They contain nothing that "amounts to significantly more than a patent upon the [abstract idea] itself." *Alice*, 134 S.Ct. at 2355 (citation omitted). Claim 1, for example, does not purport to improve the functioning of the computer system itself. Nor does it effect an improvement in any other technology or technical field. Instead, claim 1 amounts to nothing significantly more than an instruction to implement the abstract idea of "providing a forum to bring about a brand dispute" using generic computer components. That is insufficient to transform an abstract idea into a patent-eligible invention.

We are also not persuaded by Appellants' argument that "the Examiner failed to consider and provide analysis about the entire claimed combination." App. Br. 10 (citing *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016)). The Examiner considered the claim elements both individually and as an ordered combination. *See* Ans. 5.

For these reasons, we affirm the Examiner's 35 U.S.C. § 101 rejection of claim 1, as well as claims 2–6 and 9–27, not argued separately.²

² Although the Examiner does not individually address the § 101 rejection of dependent claims 3–6 and 9–22, as noted by Appellants (Reply Br. 3), these claims are in the heading of the rejection and we understand the Examiner to have grouped them together with independent claim 2. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejection of Claim 1 under 35 U.S.C. § 103(a)

In rejecting claim 1 for obviousness, the Examiner found Dixon teaches or suggests the sole disputed limitation of claim 1, “receive, from the first user via the user interface, user input indicating that the set of online content improperly uses the brand.” *See* Non-Final Act. 13 (citing Dixon ¶¶ 187, 291); Ans. 6 (citing Dixon, ¶¶ 102, 269, 301, 10, 173–175, 197).

Appellants contend the Examiner erred because the cited portions of Dixon allegedly do not teach this limitation. App. Br. 12.

We are not persuaded the Examiner erred. The Examiner found Dixon teaches that users have the ability to vote about sites/content, provide feedback and performance information related to the site, including improper brand usage such as a webpage containing misleading information, brand name confusion, or impersonated sites. Ans. 6. We agree with the Examiner that the cited portions of Dixon at least suggest the disputed limitation. Moreover, Appellants have not persuasively rebutted the Examiner’s findings articulated in the Answer. *See* Reply Br. 4–5. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellants further argue the Examiner’s reasons for modifying Krishnamurthy with the teachings of Dixon are deficient. App. Br. 13.

We are not persuaded by Appellants’ arguments because the Examiner provided “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). We find no error in the Examiner’s conclusion that the combination of the cited features of Krishnamurthy, Dixon, Rogers, and Green would have been obvious to one of ordinary skill in the art because a need exists for providing enhanced security for users of computer devices.

Non-Final Act. 15. Moreover, the Examiner’s combination of known elements would have merely produced a predictable result. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 401 (2007) (“[A] combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

Appellants do not provide evidence sufficient to demonstrate that combining the teachings of Krishnamurthy and Dixon would have been “uniquely challenging or difficult for one of ordinary skill in the art,” (*Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007)). Nor have Appellants provided any objective evidence of secondary considerations, which our reviewing court guides “operates as a beneficial check on hindsight.” *Cheese Sys., Inc. v. Tetra Pak Cheese and Powder Sys., Inc.*, 725 F.3d 1341, 1352 (Fed. Cir. 2013).

For these reasons, we sustain the Examiner's § 103(a) rejection of independent claim 1, and the separate § 103(a) rejection of independent claims 2 and 23–27, and dependent claims 3–6 and 9–22.

DECISION

We affirm the Examiner’s decision rejecting claims 1–6 and 9–27 as directed to patent-ineligible subject matter.

We affirm the Examiner’s decision rejecting claims 1–6 and 9–27 for obviousness.

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