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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ESTEBAN ALVAREZ

Appeal 2017-007383
Application 14/744,793¹
Technology Center 3600

Before ERIC S. FRAHM, STEVEN M. AMUNDSON, and JASON M. REPKO, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–5, 7–15, and 17–20, which are all the claims pending in this application.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellant, the real party in interest is Varanidea, LLC (App. Br. 2).

² Claims 6 and 16 have been canceled.

STATEMENT OF THE CASE

Introduction

Appellant's application relates to a method and system for remote management of appointment data for multiple users across multiple calendars and calendar service providers (*see* Title; Spec. ¶¶ 2–5). To ensure user privacy, the system's processing server may discard data provided by the users once a new appointment is created (Spec. ¶¶ 4, 29). Claim 1, reproduced below with emphases and bracketed lettering added, is illustrative of the claimed subject matter:³

1. A method for remote management of appointment data, comprising:

storing, in a database of a processing server, a plurality of user data entries, wherein each user data entry includes data related to a user including at least a user identifier and *one or more calendar data entries, each calendar data entry including data related to a calendar including at least a calendar identifier and an associated calendar provider*;

receiving, by a receiving device of the processing server, appointment data from a computing device, wherein the appointment data includes at least a time and/or date range, an originating user identifier, a plurality of invitee user identifiers, and an appointment length;

executing, by a processing device of the processing server, a query on the database of the processing server to identify an originating user data entry stored in the database where the included user identifier corresponds to the originating user identifier and a plurality of invitee user data entries where each invitee user data entry includes a user identifier corresponding to one of the plurality of invitee user identifiers;

transmitting, by a transmitting device of the processing server, a calendar data request for each calendar data entry

³ Claim 11 is the only other independent claim, and recites commensurate limitations pertaining to a system for remote management of appointment data.

included in the originating user data entry and each of the plurality of invitee user data entries, wherein the calendar data request includes at least the calendar identifier included in the respective calendar data entry and is transmitted to the associated calendar provider included in the respective calendar data entry;

receiving, by the receiving device of the processing server, calendar data for each calendar data entry included in the originating user data entry and each of the plurality of invitee user data entries in response to the transmitted calendar request, wherein the calendar data includes at least an indication of availability of an associated user at each time and/or date of a plurality of times and/or dates;

identifying, by the processing device of the processing server, at least one appointment time having a highest availability of invitees using one or more algorithms applied to the received calendar data, based on at least a correspondence between the indication of availability for each time and/or date of the plurality of times and/or dates and the time and/or date range and appointment length for each calendar data entry, wherein the one or more algorithms are configured to maximize availability of associated users;

transmitting, by the transmitting device of the processing server, one of the at least one identified appointment time, for each calendar data entry included in the originating user data entry and each of the plurality of invitee user data entries, to the associated calendar provider included in the respective calendar data entry; and

[A] discarding, by the processing device of the processing server, the received calendar data for each calendar data entry such that the processing server does not retain the received calendar data, wherein

at least one invitee user data entry includes two or more calendar data entries, the two or more calendar data entries including at least two different calendar providers.

The Examiner's Rejections

Claims 1–5, 7–15, and 17–20 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 4–5; Ans. 3–4.

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Claims 1–5, 7, 8, 11–15, 17, and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gingras (US 8,712,820 B2; issued April 29, 2014), Nelken (US 2006/0200374 A1; Sept. 7, 2006), and Wang (US 7,108,173 B1; issued Sept. 19, 2006). Final Act. 6–15; Ans. 5–14.

Claims 9 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gingras, Nelken, Wang, and Grover (US 2014/0358614 A1; published Dec. 4, 2014). Final Act. 15–16; Ans. 14–15.

Claims 10 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gingras, Nelken, Wang, and Coley (US 8,671,009 B1; issued March 11, 2014). Final Act. 16–17; Ans. 15–16.

Issues on Appeal

Did the Examiner err in rejecting claims 1–5, 7–15, and 17–20 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter?

Did the Examiner err in rejecting claims 1–5, 7–15, and 17–20 under 35 U.S.C. § 103 as being obvious over the base combination of Gingras, Nelken, and Wang, because Wang fails to teach or suggest the discarding limitation [A] recited in claim 1, and commensurately recited in claim 11?

ANALYSIS

Patent-Ineligible Subject Matter

In *Alice*, the Supreme Court reiterated the two-step framework set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), for determining whether claimed subject matter is judicially excepted from patent eligibility under § 101. *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). Assuming that a claim nominally falls within one of the statutory categories of machine, manufacture, process, or

composition of matter, the first step in the analysis is to determine if the claim is directed to a law of nature, a natural phenomenon, or an abstract idea (judicial exceptions). *Alice*, 134 S. Ct. at 2355. For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57. If the claim is directed to a judicial exception, such as an abstract idea, the second step is to determine whether additional elements in the claim “transform the nature of the claim’ into a patent-eligible application.” *Id.* at 2355 (quoting *Mayo*, 566 U.S. at 78–79). This second step is described as “a search for an “inventive concept””—*i.e.*, an element or combination of elements that is ‘. . . significantly more than . . . the [ineligible concept] itself.’” *Id.* at 2355 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

Alice Step One

“The first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (2016). “The abstract idea exception prevents patenting a result where ‘it matters not by what process or machinery the result is accomplished.’” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113 (1853)). “We therefore look to whether the claims . . . focus on a specific means or method that improves the relevant technology or are

instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO*, 837 F.3d at 1314.

We note independent claims 1 and 11 both perform the function of managing appointment data by storing and receiving data, and comparing data to determine optimum results based on an algorithm. Our reviewing court has concluded that 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); *see also Smart Sys. Innovations, LLC v. Chi. Transit Auth.*, 873 F.3d 1364, 1372 (Fed. Cir. 2017) (concluding “claims directed to the collection, storage, and recognition of data are directed to an abstract idea”). Moreover, our reviewing court recently has concluded that acts of parsing, comparing, storing, and editing data are abstract ideas. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1366 (Fed. Cir. 2018). In addition, the collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016).

Similarly, “collecting, displaying, and manipulating data” is an abstract idea. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017); *see also SAP Am., Inc. v. Investpic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (“merely presenting the results of abstract processes of collecting and analyzing information . . . is abstract as an ancillary part of such collection and analysis”) (quotations omitted). And our reviewing court has held that a process that starts with data, applies an algorithm, and ends with a new form of data is directed to an abstract

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idea. *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014).

Applying this guidance here, we agree with the Examiner (Final Act. 4–5; Ans. 3–4, 17–19) that Appellant’s claimed method (claim 1) and system (claim 11) are directed to the collection and comparison of data and the use of mathematical algorithms to determine optimal results, an abstract idea. *See* independent claims 1 and 11.

Moreover, but for the recitation of a generic database, processing server, computing device, and transmitting/receiving device (independent claims 1 and 11), we find the recited steps or acts, could be performed as mental steps, or with the aid of pen and paper. *See Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146 (Fed. Cir. 2016) (“While the Supreme Court has altered the § 101 analysis since *CyberSource* in cases like *Mayo* and *Alice*, we continue to ‘treat[] analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.’”) (quoting *Elec. Power*, 830 F.3d at 1354); *see also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“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*.”).

“[M]erely selecting information, by content or source, for collection [and] analysis . . . does nothing significant to differentiate a process from ordinary mental processes.” *Elec. Power*, 830 F.3d at 1355. Receiving and analyzing (or identifying data), by itself, does not transform an otherwise-abstract process or system of information collection and analysis. *See id.* Like the claims at issue in *Electric Power*, we find Appellant’s claims 1 and

11 do not invoke “any assertedly inventive programming” or an “arguably inventive set of components or methods.” *Id.*

Appellant contends the claims “provide a practical, technological solution to a problem based in computer networks” which is “‘directed to an improvement to computer functionality’ rather than the oversimplified ‘remote management of appointment data,’ as alleged by the Examiner” (App. Br. 12). In particular, Appellant contends “[t]he appealed claims improve the functions of a computer not only in terms of changing how data is aggregated and used, but also in the operation of the computer with respect to discarding obtained data,” and that “forcing a discard of data that is obtained and used to protect user privacy is also an improvement of a computer function” (Reply Br. 3).

Appellant contends the Examiner oversimplifies and ignores limitations of the claims and, as a result, fails to make a prima facie case of patent ineligibility (App. Br. 8–10; Reply Br. 2–3). Appellant argues that the claims (i) “recite a number of limitations, each of which goes well beyond ‘remote management of appointment data’” (App. Br. 10); and (ii) “recite a number of limitations that are significantly more than ‘remote management of transaction data’” (App. Br. 11). Appellant further contends that discarding data after being used “goes well beyond ‘comparing data and utilizing algorithms’” (Reply Br. 4).

We are not persuaded by Appellant’s arguments. Claim 1 recites steps for the remote management of appointment data. In sum, claim 1 focuses on the idea of storing and receiving appointment data such as calendar data and calendar data entries for users by collecting and comparing data and making mathematical algorithms to maximize user availability and

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identify appointment times having the highest invitee availability (i.e., managing a calendar). We consider this idea to be abstract.

We disagree with Appellant (App. Br. 11–12) that the focus of claims 1 and 11 is on a technical improvement. The mere recitation of storing, receiving, and transmitting data in claims 1 and 11 does not embody an improvement in computer capabilities as in *Enfish*. See 822 F.3d at 1336 (“[T]he plain focus of the claims is on an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.”). Rather, the focus of claims 1 and 11 is on calendaring tasks, i.e., determining an optimum time for a meeting with plural invitees and an organizer.

Our determination that claim 1 is directed to an abstract idea is supported by comparison with other cases where the Federal Circuit has decided that claims relating to the manipulation of data to generate other data, including sales offers, to be directed to abstract ideas, for example, *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (offer-based price optimization), *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (tailoring information presented to a user based on particular information), *Versata Development Group v. SAP America, Inc.*, 793 F.3d 1306, 1333 (Fed. Cir. 2015) (“determining a price, using organizational and product group hierarchies”), *Digitech Image Technologies, LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (employing “mathematical algorithms to manipulate existing information to generate additional information”), and *Accenture Global Services, GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–46 (Fed. Cir. 2013) (generating tasks based on rules in response to events).

Appellant's contentions (App. Br. 8–10; Reply Br. 2–3) that the Examiner failed to establish a prima facie case of subject-matter ineligibility under 35 U.S.C. § 101 are unpersuasive. The Examiner is required to provide Appellant reasonable notice as to the basis of the § 101 rejection. The notice requirement is set forth by 35 U.S.C. § 132:

[T]he PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in “notify[ing] the applicant ... [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. That section “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

See In re Jung, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (alterations in original).

Here, the Examiner stated the claims are rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter, namely, remote management of appointment data, and the claims recite generic computer elements performing generic computer functions that are not significantly more than the abstract idea nor provide a technological improvement (*see* Final Act. 4–5; Ans. 3–5, 17–20).

Based on the above reasons and findings of the Examiner, which we adopt herein, we determine the Examiner provides a reasonable explanation of why the claims are directed to an abstract idea and do not include additional elements to amount to significantly more than the abstract idea. Thus, the Examiner satisfied the notice requirement of 35 U.S.C. § 132.

The second step in the *Alice* analysis requires a search for an “inventive concept” that “must be significantly more than the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer.” *BASCOM Glob. Internet Serv., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (2016). There must be more than “computer functions [that] are ‘well-understood, routine, conventional activit[ies]’ previously known to the industry.” *Alice*, 134 S. Ct. at 2359 (second alteration in original) (quoting *Mayo*, 566 U.S. at 72–73). However, “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *BASCOM*, 827 F.3d at 1350.

Appellant also contends (App. Br. 10–11; Reply Br. 3–4) the appealed claims (i) “improve the functions of a computer . . . in terms of . . . the operation of the computer with respect to discarding obtained data” (Reply Br. 3); (ii) “recite significantly more than the remote management of appointment data” (App. Br. 10); and (iii) thus go beyond just comparing data and using algorithms (Reply Br. 4). We disagree with Appellant’s arguments in this regard.

Appellant has not persuaded us of Examiner error. Appellant has not identified what it is about claims 1 and 11 that allegedly amounts to more than a conventional arrangement of limitations for performing the abstract idea identified above. Rather, Appellant’s argument for the second step of the *Alice* analysis is, in essence, a conclusory assertion that the claims are non-conventional. As to the step of discarding calendar data, deleting data is a generic computer function that does not amount to significantly more than the abstract idea. We agree with the Examiner (Final Act. 5; Ans. 4, 20) that Appellant’s claims 1 and 11 only recite standard, generic computer elements

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used to perform generic computer functions that are well-understood, routine, and conventional activities. This is supported by Appellant's Specification and Drawings.

Specifically, Appellant's Figure 1 shows servers 102 and 106 and user devices 108 and 112 that employ standard computer components. This is evidenced by Figure 2 showing the processing server of Figure 1 (Spec. ¶¶ 11, 30–45), Figure 3 showing the user database of the processing server of Figure 2 (Spec. ¶¶ 12, 46–51), and Figure 6 showing a generic computer system capable of implementing the processing server (Spec. ¶¶ 15, 73–80). Further, computer system 600 implements “programmable logic” which “may execute on a commercially available processing platform” (Spec. ¶ 74), and may include a processor 602 which “may be a general purpose processor” (Spec. ¶ 75) for operation in conjunction with a memory 618 to perform “traditional functions associated with the respective computer system 600 components” (Spec. ¶ 79). And “[t]he display device 608 may be any suitable type of display,” such as “a cathode ray tube (CRT) display, liquid crystal display (LCD), light-emitting diode (LED) display” (Spec. ¶ 76), and “[i]nput devices 612 may include any suitable type of device for receiving input,” such as “a keyboard, mouse, track pad, touch pad, touch display, microphone, click wheel, scroll wheel, camera, etc.” (Spec. ¶ 77). In this light, we are not persuaded by Appellant's arguments that the claims (i) go “well beyond ‘comparing data and utilizing algorithms’” (Reply Br. 4); (ii) “recite significantly more than the alleged abstract idea” (Reply Br. 3); and (iii) “improve the functions of a computer” (Reply Br. 3).

Summary

In view of the foregoing, we are not persuaded the Examiner erred in rejecting as patent ineligible claims 1 and 11, and claims 2–5, 7–10, 12–15, and 17–20 not specifically argued separately.

Obviousness

Limitation [A] of independent claim 1 at issue here recites

discarding, by the processing device of the processing server, the received calendar data for each calendar data entry such that the processing server does not retain the received calendar data

Claim 1. Remaining independent claim 11 commensurately recites “discard[ing] the received calendar data for each calendar data entry such that the processing server does not retain the received calendar data.”

The Examiner finds Wang, and thus the combination of Gringas, Nelken, and Wang, discloses the discarding limitation [A] recited in independent claim 1, and commensurately recited in independent claim 11 (*see* Final Act. 12; Ans. 11). The Examiner cites Wang’s column 3, lines 54–57, as teaching the scheduling agent discards the reserving suggestion if it is not acceptable (Final Act. 12; Ans. 11). Appellant contends Wang fails to teach the discarding limitation [A], because Wang (col. 3, ll. 54–57) only discards reserving suggestions, and Wang does not teach or suggest discarding the received calendar data (App. Br. 13–14; Reply Br. 4–5). Appellant also contends “Wang fails to disclose or suggest that the calendar data used as the basis for the reserving suggestions is discarded,” and in fact “Wang relies on constant access to the calendar data for the reserving suggestions” (App. Br. 13) (emphasis omitted). Appellant further contends

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“Wang collects sensitive user data that is used, but then kept” (Reply Br. 5).
We agree with Appellant.

We agree with the Examiner (Ans. 20–21) that column 3, lines 29–57 of Wang describes in detail how the scheduling agent (i) scores candidate suggestions based on attendees’ preferences; (ii) determines “whether a particular reserving suggestion is acceptable to the attendees” (col. 3, ll. 49–51); (iii) schedules the requested meeting “according to the timing of that particular suggestion” (col. 3, ll. 53–54); and (iv) “[i]f that particular reserving suggestion is not acceptable to any attendee, it is discarded and the meeting scheduling negotiation process is continued with the next reserving suggestion in the list” (col. 3, ll. 54–57). However, we disagree with the Examiner (Ans. 21) that “it is inherent that the unacceptable suggestions are unwanted data and would be discarded. The disclosed process of Wang is functionally equivalent to discarding or not retaining calendar data.”

As can be seen by the above discussion of column 3 of Wang, Wang continues to store, use, and access the calendar data for each calendar data entry to continue negotiating meeting times for scheduling, instead of discarding the calendar data, insuring users’ privacy. According to claims 1 and 11, “calendar data for each calendar data entry” includes “an indication of availability of an associated user [e.g., an originating user and plural invitees] at each time and/or date of a plurality of times and/or dates,” as well as “data related to a calendar including at least a calendar identifier and an associated calendar provider.” Wang only discards a reserving suggestion, and does not discard the calendar data, “such that the processing server does not retain the received calendar data” as recited in claims 1 and 11. In this light, Appellant’s arguments that Wang (i) relies on constant access to the calendar data (App. Br. 13), and (ii) collects sensitive user data

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that is used and then kept (Reply Br. 5), are persuasive. We, thus, find the Examiner has failed to show Wang teaches the discarding limitation [A] recited in claim 1, and commensurately recited in claim 11.

We are, therefore, constrained by the record to find the Examiner erred in rejecting as obvious independent claim 1, independent claim 11, which recites commensurate limitations, and dependent claims 2–5, 7, 8, 12–15, 17, and 18. For similar reasons, and because each of claims 9, 10, 19, and 20 depend from respective ones of independent claims 1 and 11, we also find the Examiner erred in rejecting as obvious dependent claims 9, 10, 19, and 20 over the same base combination of Gingras, Nelken, and Wang.

DECISION

For the above reasons, we affirm the Examiner’s decision to reject claims 1–5, 7–15, and 17–20 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter; and we reverse the Examiner’s decision to reject claims 1–5, 7–15, and 17–20 under 35 U.S.C. § 103 as being unpatentable over the same base combination of Gingras, Nelken, and Wang.

Therefore, we affirm the Examiner’s decision to reject claims 1–5, 7–15, and 17–20, because at least one ground of rejection has been affirmed for each claim. *See* 37 C.F.R. § 41.50(a)(1) (“The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.”).

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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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED