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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GEOFFRY A. WESTPHAL

Appeal 2017-007448
Application 13/796,403
Technology Center 3600

Before MAHSHID D. SAADAT, ST. JOHN COURTENAY III, and
ERIC S. FRAHM, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–6, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ According to Appellant, the real party in interest is W.W. Grainger, Inc. App. Br. 2.

STATEMENT OF THE CASE

Appellant's Specification describes "a system and method for detecting a possible error in a customer specified product order quantity during the product ordering process." *See* Spec. 1, ll. 25–26. Exemplary claim 1 under appeal reads as follows:

1. A non-transitory computer-readable media having computer readable instructions stored thereon that, when executed by a processor, cause the processor to perform steps comprising:

receiving from a client computing device data indicative of a keyboard entered quantity of a product that is desired to be purchased;

comparing the keyboard entered quantity of the product that is desired to be purchased against order quantity data contained within a data repository wherein the order quantity data contained within the data repository comprises at least one of keyboard numbers that logically surround numbers associated with one or more ordering quantities for the product that have been placed in the past and keyboard numbers that would be a logical result of having keystrokes associated with a previously provided product ordering quantity repeated in error; and

when the keyboard entered quantity of the product that is desired to be purchased matches data contained within the data repository causing the client computing device to present a notification wherein the notification functions to inform a user that the specified quantity of the product is suspected to be in error.

Claims 1–6 stand rejected under 35 U.S.C. § 101 as not being directed to patent-eligible subject matter. *See* Final Act. 2–6.

Claims 1–3 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Silver (US 7,318,043 B1; issued Jan. 8, 2008) and Hubert (US 7,574,382 B1, issued Aug. 11, 2009). *See* Final Act. 6–8.

Claims 4–6 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Silver, Hubert, and the Examiner’s Official Notice. *See* Final Act. 8–9.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments that the Examiner erred. We are persuaded the Examiner erred in rejecting the claims under 35 U.S.C. § 101 for not being directed to patent-eligible subject matter. For essentially the same reasons argued by Appellant in the Briefs, and based upon the preponderance of the evidence, we are also persuaded the Examiner erred in rejecting claims 1–6 and under 35 U.S.C. § 103(a), as being obvious over the cited references. *See* Final Act. 2–9; Ans. 2–5. We highlight and address specific findings and arguments for emphasis as follows.

Section 101 Rejection

Independent claim 1 recites steps performed by a processor comprising “receiving . . . data indicative of a keyboard entered quantity of a product that is desired to be purchased” and “comparing the keyboard entered quantity of the product . . . against order quantity data contained within a data repository wherein the order quantity data contained within the data repository comprises at least one of keyboard numbers that logically surround numbers associated with one or more ordering quantities.” The claim further requires presenting a notification when the keyboard entered quantity matches data contained within the data repository and is, therefore, directed to one of the four statutory categories of patentability enumerated by 35 U.S.C. § 101 (process, machine, manufacture, or composition of

matter). The Examiner finds claims 1–6 “are directed to an abstract idea of comparing entered data entry with historical data entry to find discrepancy using rules,” which “is considered to be an abstract idea and such activities may be categorized as an idea of itself that court has determined with respect to *SmartGene*.” Ans. 2. The Examiner finds the “additional elements recited are generic computer components performing functions similar to the computer functions described in *Alice Corp.* as being well-understood, routine, and conventional.” Ans. 2. Also, “the computer elements (e.g., a computing device, keyboard, computer readable media, etc.) are all recited with a high level of generality.” Ans. 3.

Appellant contends the Examiner erred in finding the claims are not directed to patent-eligible subject matter. *See* App. Br. 4–5. Appellant argues:

[W]hile the claims at issue may include limitations that individually perform functions that are “well-understood, routine, and conventional,” the claim limitations – considered as a whole - set forth an arrangement of known, conventional pieces in a non-conventional and non-generic manner. More particularly, the claims are directed to improving computer systems by fixing a problem that arises from the use of computer systems, e.g., the problem of a customer placing an order for product in a quantity *that is the result of a typographical error that was made because of the use of a computer system keyboard during the order entry process*. Because the prior art of record fails to disclose the claimed solution to this computer-centric problem (as discussed below), it is submitted that the claims cannot be said, as a matter of law, to have been conventional or generic.

App. Br. 4. Appellant further argues that the claims, which “are directed to an *application* of a concept,” do not implement an old practice in a new environment. App. Br. 4.

We are persuaded by Appellant’s arguments. At the outset, we note the Supreme Court has long held that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). “The ‘abstract ideas’ category embodies ‘the longstanding rule that ‘[a]n idea, of itself, is not patentable.’” *Id.* at 2355 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). In determining whether a process claim recites an abstract idea, we must examine the claim as a whole, keeping in mind that an invention is not ineligible just because it relies upon a law of nature or mathematical algorithm. *Digitech Image Techs., LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344, 1350 (Fed. Cir. 2014). As noted by the Supreme Court, “an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.” *Diamond v. Diehr*, 450 U.S. 175, 187 (1981). The “directed to” inquiry asks not whether “the claims *involve* a patent-ineligible concept,” but instead whether, “considered in light of the specification, . . . ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (internal citations omitted). In that regard, we determine whether the claims “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

As stated by Appellant (App. Br. 4), claim 1 is directed to “an arrangement of known, conventional pieces” that perform functions “*in a*

non-conventional and non-generic manner.” We agree and determine that the appealed claims are not directed to an abstract idea because the focus of the claimed subject matter is on the way the arrangement of a keyboard and key locations lead to errors in entering the quantity of a product to be ordered. Similar to the claims in *Enfish* (822 F.3d at 1337), the claims in the present Application seek to improve computer capabilities, such as a “self-referential table for a computer database” by reciting the technical details that describe the alleged improvement of the technical process of ordering products and detecting the errors associated with the typographical error based on using a keyboard during the order process and the key placement on the keyboard. Such an “improvement” is a patentable improvement in computer technology.

Therefore, we are persuaded the Examiner erred in concluding the claims are directed to patent-ineligible subject matter. Accordingly, we do not sustain the rejection of claims 1–6 under 35 U.S.C. § 101.

Section 103 Rejection

Appellant argues the combination of cited references fails to teach or suggest:

[N]otifying a user when it is determined that a user specified quantity of the product matches order quantity data contained within a data repository wherein the order quantity data contained within the data repository comprises at least one of keyboard numbers that logically surround numbers associated with one or more ordering quantities for the product that have been placed in the past and keyboard numbers that would be a logical result of having keystrokes associated with a previously provided product ordering quantity repeated in error as claimed.

App. Br. 5–6. As argued by Appellant, the cited portions of Hubert in columns 1–2 relate to monitoring orders for errors, but fail to teach or suggest determining the order quantity contained in the data repository comprises one of the keyboard numbers that logically surround the number associated with the past order quantities that “would be a logical result of having keystrokes associated with a previously provided product ordering quantity repeated in error.” *See* App. Br. 6; *see also* Reply Br. 2–3. Lastly, Appellant asserts, absent the disclosure on page 12 of the Specification, the Examiner has not identified anything in Hubert that would expressly or inherently teach or suggest the Hubert’s typographical errors are related to repeating the keyboard selection of the keys surrounding the keyboard number that is previously selected in placing a product order. App. Br. 7; Reply Br. 3.

We have reviewed the Examiner’s findings in light of Appellant’s arguments, and we are persuaded the Examiner erred. In particular, we agree with Appellant that Hubert discloses using aggregated data about detected orders to identify anomalies in activity levels associated with catalog items (*see* Hubert, Abstract), which involves passively monitoring orders placed by users of the catalog (Hubert, col. 1, ll. 44–49). Hubert further discloses “the analyzer uses order volume data from prior time periods to generate a forecasted or expected order volume for the current time period.” Hubert, col. 1, l. 66–col. 2, l. 1.

In light of this disclosure, we agree with Appellant that Hubert fails to disclose a situation in which an indication of how the order quantity error with respect to repeating a previously provided product ordering quantity is identified. The Examiner has not identified any teachings in the other

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applied prior art to cure the above-identified deficiency of Silver and Hubert. Accordingly, we do not sustain the Examiner's rejection of claim 1 and claims 2–6 dependent therefrom.

DECISION

We reverse the Examiner's decision to reject claims 1–6.

REVERSED