# UNITED STATES PATENT AND TRADEMARK OFFICE

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 13/173,983 | 06/30/2011 | Reinhard KLEMM | 4366-847 | 1093 |

| | |
|---|---|
| 48500          7590          10/19/2018 | EXAMINER |
| SHERIDAN ROSS P.C. | MCCORMICK, GABRIELLE A |
| 1560 BROADWAY, SUITE 1200 | |
| DENVER, CO 80202 | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3629 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 10/19/2018 | ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

cjacquet@sheridanross.com
pair_Avaya@firsttofile.com
edocket@sheridanross.com

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

*Ex parte* REINHARD KLEMM[1]

_____

Appeal 2017-007450
Application 13/173,983
Technology Center 3600

_____


Before ROBERT E. NAPPI, BETH Z. SHAW, and
JASON M. REPKO, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.


DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the
Examiner's final rejection of claims 1 through 20. We have jurisdiction
under 35 U.S.C. § 6(b).

We affirm.

---

INVENTION

Appellant's disclosed invention is directed to providing a user with online reviews of an item being displayed on a user interface. *See* paragraphs 7 through 9 of Appellant's Specification. Claim 1 is representative of the invention and reproduced below.

1. A method comprising:

crawling, via a processor, one or more internet sources to detect online user activity of a user viewing an item being displayed on a graphical user interface;

identifying, by the processor, a plurality of feedbacks provided by respective users for the item;

inferring, by the processor, a characteristic of the user based on the online user activity;

determining, by the processor, respective user characteristics of the respective users associated with the plurality of feedbacks by analyzing at least one of online user activity associated with the respective users or online content associated with the respective users;

receiving, from the user via the graphical user interface, a desired ratio of expert and non-expert feedbacks for the item, the desired ratio defining a number of expert feedbacks to non-expert feedbacks;

determining, by the processor, a respective degree of similarity between the user and each of the respective users by analyzing the characteristic of the user with the respective user characteristics of the respective users;

identifying, by the processor, relevant feedbacks for the item from the plurality of feedbacks based on the respective degree of similarity between the user and the respective users, wherein the relevant feedbacks are associated with a portion of the respective users each having a degree of similarity to the user above a similarity threshold, and wherein the relevant feedbacks have the desired ratio of expert and non-expert feedbacks; and

outputting, by the processor, the relevant
feedbacks to the user.

REJECTIONS AT ISSUE[2]

The Examiner rejected claims 1 through 20 under 35 U.S.C. § 101 for
being directed to patent-ineligible subject matter. Final Act. 3–5; Answer 2.

The Examiner rejected claims 1, 2, 8 through 11, 13, 14, and 17
through 20 under 35 U.S.C. § 103 for being unpatentable over Trajkovic (US
2007/0028266 A1), Ruiz-Velasco (US 2009/0019488 A1), Norton (US
2007/0011161) and Ramakrishnan (US 2010/0138443 A1). Final Act. 6–9;
Answer 2.

The Examiner rejected claims 3 and 12 under 35 U.S.C. § 103 for
being unpatentable over Trajkovic, Ruiz-Velasco, Norton, Ramakrishnan
and Padgette (US 2004/0172357 A1). Final Act. 6–9; Answer 2.

The Examiner rejected claims 4 and 5 under 35 U.S.C. § 103 for being
unpatentable over Trajkovic, Ruiz-Velasco, Norton, Ramakrishnan and
Golan (US 2008/0235005 A1). Final Act. 9–10; Answer 2.

The Examiner rejected claims 6 and 15 under 35 U.S.C. § 103 for
being unpatentable over Trajkovic, Ruiz-Velasco, Norton, Ramakrishnan
and DeBonet (US 2012/0042337 A1). Final Act. 10–11; Answer 2.

The Examiner rejected claims 7 and 16 under 35 U.S.C. § 103 for
being unpatentable over Trajkovic, Ruiz-Velasco, Norton, Ramakrishnan
and Richman (US 2011/0145073 A1). Final Act. 11; Answer 2

---

[2] Throughout this Decision, we refer to the Appeal Brief filed January 9,
2017, Reply Brief filed April 10, 2017, Final Office Action mailed August 5,
2016, and the Examiner's Answer mailed February 9, 2017.

PRINCIPLES OF LAW

Patent-eligible subject matter is defined in 35 U.S.C. § 101 of the Patent Act, which recites:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

There are, however, three judicially created exceptions to the broad categories of patent-eligible subject matter in 35 U.S.C. § 101: "[l]aws of nature, natural phenomena, and abstract ideas." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S.Ct. 2347, 2354 (2014); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012). The Supreme Court sets forth a two-part "framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice*, 134 S.Ct. at 2355.

> First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . [*Mayo*, 566 U.S. at 76–77]. If so, we then ask, "[w]hat else is there in the claims before us?" *Id.*, at [77–78]. To answer that question, we consider the elements of each claim both individually and "as an ordered combination" to determine whether the additional elements "transform the nature of the claim" into a patent-eligible application. *Id.*, at [78–79]. We have described step two of this analysis as a search for an "'inventive concept'"—*i.e.*, an element or combination of elements that is "sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself." *Id.*, at [71–73].

*Id.*

Although an abstract idea itself is patent ineligible, an application of the abstract idea may be patent eligible. *Alice*, 134 S.Ct. at 2355. Thus, we must consider "the elements of each claim both individually and 'as an

4

ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). The claim must contain elements or a combination of elements that are "sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [abstract idea] itself." *Id.* (quoting *Mayo*, 566 U.S. at 72–73). The Federal Circuit has explained that, in determining whether claims are patent-eligible under Section 101, "the 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." *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016). The Federal Circuit also noted in that decision that "examiners are to continue to determine if the claim recites (i.e., sets forth or describes) a concept that is similar to concepts previously found abstract by the courts." *Id.* at 1294 n.2.

## ANALYSIS

### Rejection under 35 U.S.C. § 101

We have reviewed Appellant's arguments in the Briefs, the Examiner's rejections, and the Examiner's response to Appellant's arguments. On this record, the Examiner has not demonstrated claim 1 through 20 are directed to patent-ineligible subject matter.

Appellant argues that the Examiner's rejection under § 101 is in error as claim 1 is not directed to an abstract idea. App. Br. 11–12. Appellant argues that claim 1 as a whole improves an existing computer technology as the claim invokes a computer elements and cannot "cannot be performed

using anything other than a processor in communication with Internet sources as well as a user interface." App. Br. 11. Appellant asserts the Examiner's characterization of the claim as "'comparing new and stored information and using rules to identify options' over-summarizes, mischaracterizes, and simply ignores the claims as a whole." App. Br. 13 Appellant argues the Examiner's analogy to the claims of *SmartGene* is improper as in the decision in *SmartGene* the court was concerned with claims drawn to a computer performing a routine mental process whereas claim 1 does not recite such a process. App. Br 13-14 (citing *SmartGene Inc. v. Adv. Bio. Labs. SA,* 555 F. App'x 950 (Fed. Cir. 2014) (non-precedential)). Further, Appellant argues that Examiner overlooked several of the steps recited in claim 1 such as crawling internet sources to detect user activity, inferring a characteristic of the user based upon the activity, determining characteristic of users who provided feedback by analyzing their activity, determining a degree of similarity the user and the users who provided feedback, and providing feedback based upon the similarity of the users. App. Br. 12, 15

The Examiner finds that the claims recite an abstract concept of providing feedback (recommendations) to a user based upon similarity with other users. Answer 3, Final Act 3-4. The Examiner finds that the abstract idea recited in the claims are similar to those found abstract by the courts, stating that the concepts of collecting data and the use of collected data in combination with rules in decision making are abstract ideas. Answer 3 (citing *CyberSource Corp. v. Retail Decisions Inc.,* 654 F.3d 1366 (Fed. Cir. 2011) *and Intellectual Ventures I LLC v. Symantec Corp.,* 838 F.3d 1307, 1315 (Fed. Cir. 2016)). Further, the Examiner finds that claimed step of

crawling one or more internet sources is merely a data gathering step.
Answer 3, Final Act. 3.

We have reviewed the Examiner's rejection and response to
Appellant's arguments and we concur with Appellant that the Examiner does
not demonstrate, on this record, that the claims as a whole recite an abstract
idea. Initially, we note that the Examiner's rejection of claim 1, recited on
page 2 through 4 of the Final Rejection, does not cite to or rely on
*SmartGene*, nor does it equate the claimed process to a the mental process,
and as such, Appellant's arguments directed to *SmartGene* appear to be
misplaced. The Examiner's rejection addresses the limitations in a stating
that:

> Claim(s) 1-20 is/are directed to concept of providing feedback
> (i.e., recommendations) to a user based on similarity with
> another user wherein the relevant feedbacks are associated with
> a portion of users each having a degree of similarity to the user
> above a similarity threshold which compares new and stored
> information and uses rules to identify options (i.e., the
> feedbacks to provide) and is an abstract idea. The step of
> comparing characteristics and identifying feedbacks compares
> new and stored information using rules to determine options
> and is an abstract idea. The limitation of inferring a
> characteristic based on user activity uses categories to organize,
> store and transmit information.

Final Act 3.

We concur with the Examiner that the limitations of crawling the
internet to detect user activity is merely data gathering. However, the
Examiner's citation to *CyberSource Corp.* and *Intellectual Ventures I LLC v.
Symantec Corp.* does not sufficiently explain how Appellant's claims are
similar to the claims in *Cybersource* or *Intellectual Ventures*. As such, on
this record, the Examiner's response does not demonstrate the Examiner

fully considered the limitations of claims 1 through 20, and we therefore do not sustain the Examiner's § 101 rejection.

Rejections under 35 U.S.C. § 103

Independent claims 1, 10, and 19 and dependent claims 8, 9, 13, 14, 17 and 18.

Appellant argues that the Examiner's rejection of independent claims 1, 10 and 19, is in error as the combination of the references teach the claim limitation directed to receiving from the user, desired ratios of expert and non-expert feedback items for the item. App. Br. 22–23. Appellant's arguments focus on Ramakrishnan and assert that the teachings cited by the Examiner are concerned with aggregating feedbacks for items and not an item as claimed. App. Br. 22-23, Reply Br 8–9. Further, Appellant argues that the aggregation in Ramakrishnan teaches varying the weighting of recommendations from experts and users and does not teach adjusting desired ratios defining a number of expert feedback to non-expert feedbacks as claimed. App. Br. 23.

The Examiner, in response, states that Trajkovic discusses determining recommendations based upon feedbacks for a single item. Answer 5 (citing Trajkovich para. 0023). Further, the Examiner finds that Ramakrishnan teaches the aggregation of feedback that allows the user to adjust the recommendation to reflect higher confidence in experts then other users. Answer 5 (citing para. 0041–44 and Fig 1B of Ramakrishnan). The Examiner reasons that if the user were to set the weights for experts to 0.75

and others to 0.25 there would be three times as many reviews from experts than from others. Answer 5.

Appellant's arguments do not persuade us the Examiner erred in finding that the claim limitation directed to receiving from the user desired ratios of expert and non-expert feedback for the item, is taught by Ramakrishnan. The Examiner finds that the combination of Trajkovich and Ramakrishnan teach the limitation directed to the recommendations for one item. Further, Appellant's arguments directed to the weighting of reviews by experts and users do not persuade us of error. We concur with Appellant that the Examiner's example of weighting experts at .75 and non-experts at .25 does not necessarily mean the results will have three times the experts as non-experts. However, weighting experts 1.0 and non-experts at 0.0 (or vice versa) will result in the weighting defining a ratio of a number of experts to non-experts, in that all reviews will be from experts and none from non-experts (or vice versa). Representative claim 1 does not recite a limitation that precludes ratios from being all experts (or no experts).[3] In addition to the above weighting of reviews, we also note that Ramakrishnan teaches that a user can narrow the population of reviews being considered to include or exclude certain populations, *see* para. 19 and para. 22, and as such includes other teachings of defining a ratio of a number of reviewers in one group (experts) over another. Accordingly, Appellant's arguments do not persuade us the Examiner erred in finding Ramakrishnan teaches the claim limitation

---

[3] We note that Appellant's Specification contemplates the ratio can be adjusted to all experts or all user reviews. See Spec. ¶ 42. Thus, in light of Appellants' Specification, the claim encompasses a ratio of 1:0 or 0:1.

directed to receiving from the user, desired ratios of expert and non-expert feedback items for the item.

Appellant also argues that the Examiner does not provide a proper motivation to combine the references. App. Br. 25. We are not persuaded of error by these arguments. Appellant's arguments rely upon the teaching, suggestion, or motivation (TSM) test to determine obviousness. In *KSR*, the Supreme Court rejected the rigid application of the teaching, suggestion, or motivation (TSM) test in favor of a more expansive and flexible approach to the determination of obviousness. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 415 (2007). Specifically, the Court stated that "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* at 418. The determination of obviousness can be supported with an "articulated reasoning with [a] rational underpinning to support the legal conclusion of obviousness." *Id.* In this case, the Examiner provides a reasoned rationale why the skilled artisan would take the cited teaching of each reference and combine them. *See* Final Act 7–8. Appellant's arguments do not show error in the Examiner's reasoning or rationale. Thus, we are not persuaded the Examiner erred in concluding the skilled artisan would combine the teachings as set forth in the rejection. Accordingly, we sustain the Examiner's obviousness rejection of independent claims 1, 10 and 19. We

also sustain the Examiner's rejection of dependent claims 8, 9, 13, 14, 17 and 18 which are similarly rejected and not separately argued.

Dependent claims 2, 11 and 20

Appellant argues claim 2 recites sorting the feedback based upon degree of similarity, which is not taught by the combination of the references. App. Br. 24, Reply Br. 10. Appellant's arguments address the teachings of Norton, asserting that Norton is directed to sorting items based upon a keyword suggested by a user, and as such fails to suggest sorting feedbacks based upon degree of similarity. App. Br. 24.

The rejection relies upon Trajkovich to teach generating similarity scores, but since it does not disclose an ordered (or ranked) list, Norton was cited to demonstrate using a ranked list. Answer 5-6 (citing Trajkovich, ¶ 26 and Norton, ¶ 56).

Appellant's arguments do not persuade us of error in the Examiner's rejection. Appellant's arguments do not address the combined teachings of the references, which the Examiner finds meets the claim limitations. We concur with the Examiner's findings that Trajkovich teaches determining similarities between profiles and generating a metric of the similarly. *See* Trajkovich ¶ 26. Further, we concur with the Examiner that Norton teaches a ranked list. *See* Norton ¶ 56. While Norton's ranked list may be of other data, it nonetheless teaches that the use of a ranked list is known. Accordingly, we are not persuaded of error in the Examiner's rejection of claims 2, 11 and 20 and we sustain the Examiner's rejection of these claims.

Rejections of claims 3 through 7, 12, 15 and 16

Appellant does not addresses the Examiner's obviousness rejections of dependent claims 3 through 7, 12 15, and 16. Accordingly, there are no

issues for us to consider with respect to these rejections, and we sustain these rejections for the same reasons discussed above with respect to independent claims 1, 10 and 19, upon which they depend.

## DECISION

We reverse the Examiner's rejections of claims 1 through 20 under 35 U.S.C. § 101.

We affirm the Examiner's rejections of claims 1 through 20 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

## AFFIRMED