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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 12/186,905 | 08/06/2008 | Deborah Hill | 4366-629 | 2016 |
| 48500 | 7590 | 12/19/2018 | EXAMINER | |
| SHERIDAN ROSS P.C. 1560 BROADWAY, SUITE 1200 DENVER, CO 80202 | | | ARAQUE JR, GERARDO | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3689 | |
| | | | NOTIFICATION DATE | DELIVERY MODE |
| | | | 12/19/2018 | ELECTRONIC |

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DEBORAH HILL, SARAH H. KIEFHABER,
JOYLEE E. KOHLER, KATHERINE A. SOBUS, and
RODNEY A. THOMSON

Appeal 2017-007481
Application 12/186,905
Technology Center 3600

Before ERIC S. FRAHM, JOHN P. PINKERTON, and JOYCE CRAIG,
Administrative Patent Judges.

CRAIG, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 31–60, which are all of the claims pending in this application.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is Avaya, Inc. App. Br. 2.

² Claims 1–30 have been canceled. App. Br. 46 (Claim App'x).

INVENTION

Appellants' invention relates to a premises enabled mobile kiosk.

Spec 1. Claim 31 is illustrative and reads as follows:

31. A contact center, comprising:

a plurality of network interfaces that enable the contact center to receive and service contacts from a plurality of premises;

a microprocessor; and

computer memory comprising instructions that are executable by the microprocessor, the instructions, when executed by the microprocessor, enabling the contact center to:

receive a contact at a network interface of the multiple network interfaces;

analyze the contact to determine whether the contact includes a premises tag that identifies the contact as originating from a first premises in the plurality of premises as opposed to originating from a second premises in the plurality of premises;

determine that the contact comprises the premises tag that identifies the contact as originating from the first premises as opposed to the second premises; and

in response to determining that the contact comprises the premises tag, facilitate establishment of a communication session between a contact center agent and a person carrying a mobile kiosk with preferential treatment as compared to if the contact lacked the premises tag.

REJECTIONS

Claim 42 stands rejected under 35 U.S.C. § 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement. Final Act. 2–3.

Claims 31–60 stand rejected under 35 U.S.C. § 112 (pre-AIA), second paragraph, as indefinite for failing to particularly point out and distinctly

claim the subject matter which the applicant regards as the invention. Final Act. 3–5.

Claims 31–60 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter. Final Act. 5–14.

Claims 31, 35, 37–42, 45, 46, 50, 51, 53, 54, and 58–60 stand rejected under pre-AIA 35 U.S.C. § 102(b) as anticipated by Thomson (US 2004/0078209 A1, published Apr. 22, 2004). Final Act. 14–26.

Claims 32, 33, 34, 47, 48, 49, 55, 56, and 57 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over the combination of Thomson and Hale et al. (US 2004/0172316 A1, published Sept. 2, 2004 (hereinafter “Hale”)). Final Act. 27–33.

Claim 36 stands rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over the combination of Thomson and Mendelson (US 2007/0069923 A1, published Mar. 29, 2007). Final Act. 34–36.

Claims 43, 44, and 52 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over the combination of Thomson and Burckart et al. (US 2008/0016181 A1, published Jan. 17, 2008 (hereinafter “Burckart”)). Final Act. 36–41.

ANALYSIS

Rejection of Claim 42 under 35 U.S.C. § 112, first paragraph

Claim 42 recites “wherein the person comprises an employee that works at the first premises.” The Examiner rejected claim 42 because it depends from claim 31, and “claim 31 discloses that the person receives preferential treatment and the specification only provides support that a

customer is provided preferential treatment.” *See* Final Act. 2–3 (emphasis omitted).

The Examiner provided no support for the interpretation of claim 31 as requiring a “person” that receives preferential treatment. *See* Final Act. 3. The Examiner’s interpretation of claim 31 is not consistent with the Specification, which describes only that certain “contacts” receive preferential treatment.³ Spec. 3, 13. The Specification describes that a contact is generated by way of a mobile kiosk, may be tagged with a premises tag, and is sent to a contact center. *See* Spec. 3. The Specification further describes that the use of a premises tag may allow a contact to receive preferential treatment in the contact center. *See id.* at 13. We agree with Appellants that written description support for claim 42 can be found in originally-filed claim 1 and pages 3 and 13 of the Specification. App. Br. 10. In particular, page 3 teaches “[t]he mobile kiosk may be carried either by the customer...or by a customer service agent on premises,” providing an example of how a customer service agent (an employee) may be the person carrying the mobile kiosk when the communication session associated with the contact has preferential treatment. *See id.*

Thus, the written description clearly allows persons of ordinary skill in the art to recognize that the inventor invented what is claimed. *See Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en

³ As an initial matter of claim construction, we give the claim its broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). “In the patentability context, claims are to be given their broadest reasonable interpretations. . . . limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citations omitted).

banc) (citation and quotations omitted). Accordingly, on the record before us, we do not sustain the Examiner's rejection of claim 42 under 35 U.S.C. § 112, first paragraph.

Rejection of Claims 31–60 under 35 U.S.C. § 112, second paragraph

The Examiner rejected all of the pending claims for indefiniteness because “the Examiner is uncertain as to what ‘contact’ is supposed to be.” Final Act. 4.

Regarding independent claims 31, 46, and 54, we agree with Appellants that the claims as originally filed describe that a contact includes a premises tag, and that a communication session between a contact center agent and a person carrying a mobile kiosk has preferential treatment. App. Br. 11. The Specification describes that:

A typical contact center includes a switch and/or server to receive and route incoming packet-switched and/or circuit-switched contacts and one or more resources, such as human agents and automated resources (*e.g.*, Interactive Voice Response (IVR) units), to service the incoming contacts. Contact centers distribute contacts, whether inbound or outbound, for servicing to any suitable resource according to predefined criteria.

Spec. 1, ll. 9–13. The Specification further describes that contacts are generated via a mobile kiosk. Spec. 3, ll. 14–15. In claim 31, a contact is received at a network interface and analyzed to determine whether it includes a premises tag. If it does, a communication session is established with preferential treatment. Because the independent claims particularly point out and distinctly claim the subject matter the applicant regards as the invention, the source of the Examiner's confusion as to the meaning of “contact,” and whether a “contact” and a “person” are the same in the last limitation of claim 31, is unsupported.

Accordingly, we reverse the Examiner's rejection of claims 31, 46, and 54 under 35 U.S.C. § 112, second paragraph. We also reverse the Examiner's rejection of claims 32–38, 40–45, 47–53, and 55–60, dependent therefrom.

The Examiner further rejected claim 39 for indefiniteness because the invention, as claimed, “has explicitly stated that the location data is attained from the contact's premises tag (claim 35), but then claims that it is distinct from the premises tag (claim 39).” Final Act. 4–5.

We agree with Appellants that the Examiner erred. The Specification describes that data for a contact can include a premises tag and a location field that “may comprise both historical and current location information.” App. Br. 11 (citing Spec. 24–25). In other words, the contact can have a premises tag that is distinct from location data. Therefore, claim 35 properly recites that “the premises tag identifies the contact as a premises-based contact such that the contact center marks the contact as originating from the first premises.” Claim 39 properly depends from claim 35 and further recites “wherein the contact further comprises location data, and wherein the location data is distinct from the premises tag.”

Because claim 39 particularly points out and distinctly claims the subject matter the applicants regard as the invention, on the record before us, we reverse the Examiner's rejection of claim 39 under 35 U.S.C. § 112, second paragraph.

Rejection of Claims 31–60 under 35 U.S.C. § 101

We have reviewed the Examiner's § 101 rejection of claims 31–60 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. 5–24) and in the Action from which this appeal was taken (Final Act. 5–14). We provide the following explanation for emphasis.

Under 35 U.S.C. § 101, 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 an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014). 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*, 134 S. Ct. at 2355 (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 id.* 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. *Id.* 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). The Court

acknowledged in *Mayo* that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. 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. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

In rejecting claims 31–60 under 35 U.S.C. § 101, the Examiner concluded

[the claims] are directed to an abstract idea of queue management and customer service that includes preferential treatment for qualifying users, specifically, directed towards providing customer service for a user by fulfilling their request and utilizing the concept of queue management and location information in order to fulfill the users request and taking into account certain characteristics of the user in order to determine whether they can be granted preferential treatment, which is (i) a fundamental economic practice, (ii) a method of organizing human activities, (iii) an idea of itself, or (iv) a mathematical relationship or formula.

Final Act. 6. The Examiner further concluded the claimed invention is also directed to the abstract idea of “collecting data, recognizing data, and storing the recognized data in order to address a customer’s need and have it fulfilled.” *Id.* at 11–12. Our reviewing court has held that 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, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (patent-ineligible claims were directed to a combination of abstract ideas).

The Examiner also determined that the concept of data collection, recognition, and storage is undisputedly well-known and, indeed, humans have always performed these functions. Final Act. 12. The Examiner determined that the claimed invention merely uses general purpose devices to perform the steps of data retrieval regarding the customer, the need, and available resources (employees) to fulfill the customer's request. *Id.* The Examiner further determined there is no "inventive concept" in the claimed invention's use of a general purpose computing device and mobile device to perform well-understood, routine, and conventional activities commonly used in the technical field of queue management, customer service, and preferential treatment. *Id.* The Examiner determined that, instead, the claims attempt to limit the abstract idea of recognizing and storing information using the devices to a particular environment. *Id.*

Alice Step One: Abstract Idea

Appellants first contend the Examiner erred because the claims are directed to a specific asserted improvement in computer capabilities, i.e., the logic and structures involved in providing computerized contact center-type customer service, including an improved communication session, to a person who is correlated with a specific premises of a contact, for example. App. Br. 14. Appellants argue that, because the claims are directed to the logical structures and processes of providing computerized contact center-type customer service to a person correlated with a specific premises, the claims are patent eligible under *Enfish*. *Id.*; see *Enfish*, 822 F.3d at 1336. Appellants also argue that the claims are necessarily rooted in technology because computer elements in the claims are necessary to the functioning of the claim elements. App. Br. 18.

We are not persuaded. In *Enfish*, “the plain focus of the claims is on an improvement to [the] computer functionality itself.” *Enfish*, 822 F.3d at 1336. In contrast, we do not find a claimed focus on an improvement to the computer functionality here. Appellants point to the Specification, but none of the cited paragraphs explains how interacting with customers in a face-to-face manner while also providing the advantages offered by a contact center system improves any computer functionality. See App. Br. 17 (citing Spec. 2–3). For these reasons, we agree with the Examiner that the claims are directed to solving a business or commercial problem, not a technical problem. See Ans. 6–7. Because we are not persuaded the Examiner erred in concluding the claims are directed to abstract ideas, we proceed to step two of the analysis under *Alice*.

Alice Step 2: Significantly More

Appellants first contend the claims are patent eligible because they do not recite conventional computer functions in merely a generic manner. App. Br. 23. In particular, Appellants argue the Examiner misconstrued and oversimplified the concept of “queue management” because queue management in computer contact centers is not well-understood, routine, and conventional activity. *Id.* at 25.

We are not persuaded that the Examiner erred. We agree with the Examiner’s findings of fact and legal conclusions, set forth on pages 11–24 of the Answer, which we incorporate herein by reference. In view of Appellants’ Specification, and consistent with the Examiner’s determinations, we determine the claims do not recite:

- (i) an improvement to the functioning of a computer;
- (ii) an improvement to another technology or technical field;

- (iii) an application of the abstract idea with, or by use of, a particular machine;
- (iv) a transformation or reduction of a particular article to a different state or thing;
- (v) other meaningful limitations beyond generally linking the use of the abstract idea to a particular technological environment; or
- (vi) a specific limitation other than what is well-understood, routine, conventional activity in the field or unconventional steps that confine the claim to a particular useful application. *See* Manual of Patent Examining Procedure (“MPEP”) § 2106.05. Thus, the claims are not directed to something significantly more than the abstract idea.

Because we are not persuaded that the Examiner erred in concluding the claims are directed to patent ineligible subject matter, we sustain the Examiner’s § 101 rejection of claims 31–60, not argued separately. *See* App. Br. 32.

*Rejection of Claims 31, 35, 37–42, 45, 46, 50,
51, 53, 54, and 58–60 under 35 U.S.C. 102(b)*

Appellants persuade us of error in the anticipation rejection of claim 31. App. Br. 32–33.

In rejecting claim 31, the Examiner cites to Thomson, without providing a clear mapping of the contested limitation “a premises tag” to a corresponding feature found in Thomson. Rather, the Examiner cites several paragraphs of Thomson, without identifying to which “user information” the recited “premises tag” maps. Final Act. 15–16. For example, the Examiner relies on Thomson’s disclosure of a location monitor (Thomson ¶ 25), information provided as part of a consumer registration process (Thomson

¶¶ 36–38), information about the user’s location (Thomson ¶¶ 42, 46), and interactive help functionality (Thomson ¶¶ 47–49).

Our reviewing court guides that “[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984). We find the Examiner has not correctly or reasonably mapped the claimed “premises tag” to a corresponding feature found in the Thomson reference.

Accordingly, on the record before us, we reverse the Examiner’s rejection of independent claim 31, as well as grouped claims 35, 37–42, 45, 46, 50, 51, 53, 54, and 58–60, not argued separately.

*Rejection of Claims 32–34, 47–49, and 55–57
under 35 U.S.C. § 103(a)*

For the reasons discussed above, the Examiner has not sufficiently explained how Thomson teaches or suggests the recited “premises tag.” The Hale reference does not cure the deficiency in Thomson. The Examiner relied on Hale as teaching that it is well-known in the art to provide a user, who has subscribed to a particular service level, with preferential treatment that gives the user priority in a queue relative to other users. Ans. 30.

For these reasons, we are persuaded that the Examiner erred in finding the combination of Thomson and Hale teaches or suggests the disputed limitation. On the record before us, therefore, we reverse the Examiner’s § 103(a) rejection of claims 32–34, 47–49, and 55–57.

Rejection of Claims 36, 43, 44, and 52 under 35 U.S.C. § 103(a)

For the reasons discussed above, the Examiner has not sufficiently explained how Thomson teaches or suggests the recited “premises tag.” The

Mendelson and Burckart references do not cure the deficiency in Thomson. The Examiner explains that “Mendelson and Burckart are not being provided to teach the premises tag, but that Thomson discloses this feature” Ans. 31.

For these reasons, we are persuaded the Examiner erred in finding the combination of Thomson and Hale teaches or suggests the disputed limitation. On the record before us, therefore, we reverse the Examiner’s § 103(a) rejections of claims 36, 43, 44, and 52.

DECISION

We affirm the Examiner’s decision rejecting claims 31–60 under 35 U.S.C. § 101.

We reverse the Examiner’s decision rejecting:

- claim 42 under 35 U.S.C. § 112, first paragraph;
- claims 31–60 under 25 U.S.C. § 112, second paragraph;
- claims 31, 35, 37–42, 45, 46, 50, 51, 53, 54, and 58–60 under 35 U.S.C. 102(b); and
- claims 32–34, 36, 43, 44, 47–49, 52, and 55– 57 under 35 U.S.C. § 103(a).

Because we affirm at least one ground of rejection with respect to each claim on appeal, the Examiner's decision rejecting claims 31–60 is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

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