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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PETER KOCH and DAVID TSO

Appeal 2017-007780
Application 13/659,756¹
Technology Center 3600

Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants² appeal under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 1–26.³ We have jurisdiction under
35 U.S.C. § 6(b).

¹ Appeal 2017-009025 (Application 13/197,669) is related to this appeal. This appeal and its related appeal are directed to the same underlying inventions and issues. These appeals are decided concurrently.

² According to Appellants, the real party in interest is Balluun Management AG. App. Br. 1.

³ Appellants indicate they are unaware of any other related appeals. *See* App. Br. 1. However, Appeal 2017-009025 (Application 13/197,669) is related to this appeal. *See* 37 C.F.R. § 41.37(c)(ii). We respectfully request Appellants and Appellants' counsel review pending and future proceedings before the Board and ensure that all related appeals are identified.

We affirm.

STATEMENT OF THE CASE

Appellants' invention relates to a system and method of a business to business (B2B) marketplace and social networking in the B2B marketplace (Spec. 1:9–10). Exemplary claim 1 under appeal reads as follows:

1. A social business to business marketplace system, comprising:

a computer based marketplace for at least one seller and at least one buyer, the marketplace having a store front for each seller, a shopping cart for each buyer at each the storefront for each seller, an order management unit that manages orders submitted using the shopping cart and a payment management unit that manages the payment for orders to facilitate a transaction between a buyer and a seller who are users of the marketplace;

a computer based social feed system, integrated into the marketplace, that provides company walls, employee walls, partner walls and private messaging and generates an opportunity social feed to the seller when an item is placed into the shopping cart by a buyer so that the seller is able to communicate with the buyer about the item; automatically generates [an] order management social feed to the seller when the buyer submits a completed order for the item and automatically generates a purchase social feed to the seller when the buyer has purchased the item; and

wherein the opportunity social feed, the order management social feed and the purchase social feed permit the buyer and seller to sends feeds to each other during the transaction.

REFERENCES and REJECTIONS

Claims 1–26 stand rejected under 35 U.S.C. § 101 as not being directed to patent-eligible subject matter. *See* Final Act. 10–16.

Claims 1–2, 4–16, and 18–26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Leff et al. (US 2008/0228598 A1; published Sept. 18, 2008) (“Leff”) and Herniak et al. (US 2008/0177641 A1; published July 24, 2008) (“Herniak”). *See* Final Act. 19–27.

Claims 3 and 17 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Leff, Herniak, and Deacon et al. (US 2009/0192871 A1; published July 30, 2009) (“Deacon”). *See* Final Act. 27–28.

Claims 15–26 are provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 15–26 of co-pending Application No. 13/197,669. *See* Final Act. 16–17.

Claims 1–14 are provisionally rejected on the ground of non-statutory double patenting as being unpatentable over claims 1–14 of co-pending Application No. 13/197,669. *See* Final Act. 17–18.

PRINCIPLES OF LAW

Patent-Eligible Subject Matter

The Supreme Court has set forth “a 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 Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294 (2012)). According to this framework, the first step of the analysis is to determine whether the claims at issue are directed to a law of nature, natural

phenomena, or abstract idea. *See id.* If so, the second step of the analysis is to determine whether the elements of each claim, considered both individually and “as an ordered combination,” “transform the nature of the claim” into patent-eligible subject matter. *Id.*

Obviousness

The Supreme Court has rejected the rigid requirement of demonstrating a teaching, suggestion, or motivation in the references to show obviousness. *See KSR Int’l Co., v. Teleflex Co.*, 550 U.S. 398, 415–16 (2007); *see also In re Ethicon, Inc.*, 844 F.3d 1344, 1350 (Fed. Cir. 2017) (“*KSR* directs that an explicit teaching, suggestion, or motivation in the references is not necessary to support a conclusion of obviousness.”). Further, one cannot show non-obviousness by attacking references individually when the rejection is based on a combination of references. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *see also In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ 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. We, however, are not persuaded the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a) as obvious over the cited references, and we adopt as our own the findings and reasons set forth by the Examiner. *See* Final Act. 19–28; *see also* Ans. 10–13. We highlight and address specific findings and arguments for emphasis as follows.

Rejection Under 35 U.S.C. § 101

Independent claims 1 and 15 recite a social B2B marketplace system and method that facilitates a transaction between a buyer and seller who are users of the marketplace, that generates an opportunity social field, order management social feed, and purchase social feed, and are, 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). Applying the first part of the *Alice* analysis, the Examiner finds the claims are directed to facilitating a seller and buyer to sell and purchase goods in a social marketplace, which is “an idea, having no particular concrete or tangible form,” and “similar to the concepts involving human activity relating to commercial practices,” and, thus, claim 1 is directed to an abstract idea. Ans. 4. Applying the second part of the *Alice* analysis, the Examiner finds the additional elements or combination of elements in the claim other than the abstract idea itself amount to no more than generic functions that can either be performed manually or by a generic computer. *See* Ans. 7–8.

Beginning with the first step of the *Alice* analysis, we must determine “whether the claims at issue are directed to one of those patent-ineligible concepts,” including abstract ideas. *Alice*, 134 S. Ct. at 2355. In performing this determination, we must ask whether the focus of the claims is on a 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 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct. at 2358–59).

Appellants first argue the claims do not preempt any fundamental business practice or abstract idea, and are therefore patent-eligible. *See* App. Br. 9. This argument is not persuasive, as the Federal Circuit has made clear that “the absence of complete preemption does not demonstrate patent eligibility” of a claim. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

Appellants further argue the claims are directed to improving computer capabilities (i.e., the ability of the computer to be used for buying/selling goods using a social feed system), and not any alleged abstract idea in which a computer is invoked merely as a tool. *See* App. Br. 9. As described below, we conclude that, under step two of the *Alice* analysis, the claims are significantly more than an abstract idea, and thus, transform the nature of the claims into a patent-eligible application. Thus, we conclude it is not necessary to identify the precise nature of the abstract idea recited in the claims. *See DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (“identifying the precise nature of the abstract idea is not as straightforward as in *Alice* or some of our other recent abstract idea cases . . . under any of these characterizations of the abstract idea, the . . . claims satisfy *Mayo/Alice* step two”).

We turn to the next step of the *Alice* analysis. In step two, as previously discussed, we consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether the additional elements “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78).

Here, Appellants argue the claims are directed to a technical problem (i.e., an electronic sales marketplace) and a solution (the claimed

marketplace and social feed system) that did not exist before the Internet. *See* App. Br. 9–10. Thus, according to Appellants, the claims are not directed to simply a computer-implementation of a notoriously well-known idea, such as hedging. *See* App. Br. 10.

We are persuaded by Appellants’ argument that, similar to *DDR Holdings*, the appealed claims are “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer” technology, and that the claimed invention is not simply using computers to serve a conventional business purpose. *See DDR Holdings*, 773 F.3d at 1257. Appellants’ Specification describes limitations of prior B2B marketplace systems, disclosing that it would be desirable to provide a business with access to and provide a medium to enable conversations with its customers, other businesses, etc., within the B2B marketplace. *See* Spec. 1:19–22. Further, Appellants’ Specification, and the appealed claims, describe a social feed structure that is integrated into the B2B marketplace, where the social feed structure provides for public messaging, private messaging, and activity streams (i.e., indications within the social feed structure that indicate what is happening within the system based on activity). *See* Spec. 10:4–12:2; 15:8–17:9; 17:23–18:26; Claim 1. Thus, the problem and solution specifically arise in computer technology, and the claimed invention does not simply use a computer to serve a conventional business purpose.

Therefore, we are persuaded the Examiner erred in finding claims 1–26 recite patent-ineligible subject matter. Accordingly, we do not sustain the rejection of claims 1–26 under 35 U.S.C. § 101.

Rejection Under 35 U.S.C. § 103(a)

Appellants contend the combination of cited references fails to teach or suggest “a computer based marketplace . . . having a store front for each seller, [and] a shopping cart for each buyer at [each] storefront for each seller,” as recited in claim 1, and similarly recited in claim 15. *See App. Br. 11, 13.* As argued by Appellants, Leff merely discloses a marketplace for purchase of products or services in which the marketplace has a business directory and a shopping cart for the marketplace. *See App. Br. 12–13.* According to Appellants, Leff fails to teach or suggest the following elements recited in claim 1: (a) a store front for each seller; and (b) a shopping cart for each buyer at each store front for each seller. *See App. Br. 12–13.*

We are not persuaded by Appellants’ contention. Contrary to Appellants’ argument, Leff teaches that the marketplace includes a webpage for displaying a plurality of business members on an online business directory, where the web page includes section icons that allow a user to view information about a business in a window of the page. *See Ans. 10* (citing Leff ¶ 42). Consistent with the Examiner’s findings, neither Appellants’ claims, nor Appellants’ Specification, define or describe the claimed “store front” in a manner that distinguishes the claimed “store front” from Leff’s business member webpage. *See Ans. 10.* Further, Leff teaches that upon a user selecting a business, a new page is displayed with content appurtenant to the business, where the new page includes a shopping-cart icon for a user to select a quantity of a product offered by the business member, and to take steps to purchase the product through a checkout procedure. *See id.* (citing Leff ¶ 47). Similar to the claimed “store front,”

neither Appellants' claims, nor Appellants' Specification, define or describe the claimed "shopping cart" in a manner that distinguishes the claimed "shopping cart" from Leff's shopping cart icon. *See* Ans. 10. Thus, Leff teaches or suggests the claimed "store front for each seller," and the claimed "shopping cart for each buyer at each storefront for each seller."

Appellants also contend the combination of cited references fails to teach or suggest "a social feed system that . . . generates an opportunity social feed to [a] seller when an item is placed into [a] shopping cart by a buyer so that the seller is able to communicate with the buyer about the item; generates [an] order management social feed to the seller when the buyer submits a completed order and generates a purchase social feed to the seller," as recited in claim 1, and similarly recited in claim 15. *See* App. Br. 12, 14. Appellants further argue Herniak merely discloses cooperation between buyers and not between a buyer and a seller, and thus, fails to teach or suggest the claimed generating an opportunity social feed to a seller, generating an order management social feed to the seller, and generating a purchase social feed to the seller. *See* App. Br. 12–14.

We are not persuaded by this contention either. The Examiner did not solely rely on Herniak for teaching the claimed "social feed system." *See* Ans. 11. Instead, the Examiner relied upon the combination of Leff and Herniak for teaching or suggesting the aforementioned claim element. More specifically, the Examiner found Leff teaches or suggests a system that includes a social network site that facilitates communication between buyers and sellers, where the system tracks movement or behavior of users of the social network site and displays an advertisement on a private bulletin board of a user when the user's movement or behavior is determined to be

repetitive. *See* Ans. 11 (citing Leff ¶¶ 14–15, 17, 53–54, and 57). The Examiner further relied upon Herniak for teaching or suggesting an indication that a collaborative shopper has placed an item in a shopping cart for purchase, an indication received by a retailer that a collaborative shopper has selected or purchased an item, and an advertisement provided to a collaborative shopper by a retailer according to information related to a selected or purchased item. *See* Ans. 12 (citing Herniak ¶¶ 32–35 and 67–70). Appellants’ argument fails to address the combination of references, and, thus, is not persuasive of Examiner error.

No separate arguments are presented for the remaining dependent claims. *See* App. Br. 15. Therefore, we are not persuaded that the Examiner erred in finding claims 1–26 unpatentable in light of the cited prior art references. Accordingly, we sustain the rejection of claims 1–26 under 35 U.S.C. § 103(a).

Double Patenting Rejections

Appellants have not provided any arguments to show error in the Examiner’s findings regarding either the statutory double patenting rejection under 35 U.S.C. § 101 or the non-statutory double patenting rejection. *See* Ans. 2. “If an appellant fails to present arguments on a particular issue — or more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.” *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Accordingly, we summarily affirm the aforementioned double patenting rejections.

DECISION

We reverse the Examiner's rejection of claims 1–26 under 35 U.S.C. § 101.

We affirm the Examiner's rejection of claims 1–26 under 35 U.S.C. § 103(a).

We summarily affirm the Examiner's rejection of claims 15–26 on the ground of statutory double patenting.

We summarily affirm the Examiner's rejection of claims 1–14 on the ground of non-statutory double patenting.

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).

AFFIRMED