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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID A. DERIEUX and MICHAEL MANNING

Appeal 2017-008238
Application 11/836,173
Technology Center 3600

Before MAHSHID D. SAADAT, DENISE M. POTHIER, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 15–17, which are all the claims pending in this application.² We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the Government of the United States of America, as represented by the Secretary of the Navy, as the real party in interest. Br. 3.

² Claims 1–14 have been previously canceled.

STATEMENT OF THE CASE

Introduction

Appellants' Specification describes "a system and method to account for first responders in a hazardous environment." Spec. 1:5–7.

Exemplary Claim

Claim 15 is illustrative of the invention and reads as follows.

15. A method of automatically identifying a plurality of first responders during a response to a hazardous site, the plurality of first responders wearing a corresponding plurality of active RFID transponders, the method comprising:

polling the plurality of active RFID transponders with an active RFID reader on at least one first responder vehicle of a plurality of first responder vehicles, when the at least one first responder vehicle is powered up, thereby generating an electronic ride list corresponding to the polled plurality of active RFID transponders, the active RFID reader communicating with a computer processor and coupled to a display device;

continuously polling the plurality of active RFID transponders with the active RFID reader, while the at least one first responder vehicle is powered up, thereby generating a real-time roll call list corresponding to the continuously polled plurality of active RFID transponders;

generating by the computer processor an unaccounted personnel list, after comparing the real-time roll call list with the electronic ride list;

providing from the at least one first responder vehicle by the computer processor the electronic ride list, the real-time roll call list, and the unaccounted personnel list to a central database comprising a host computer via a wireless data communication system disposed on the at least one first responder vehicle;

generating by the host computer an aggregated ride list for the hazardous site at the central database based on the

electronic ride list, the real-time roll call list, and the unaccounted personnel list from the plurality of first responder vehicles;

generating by the host computer a missing personnel list, after the unaccounted personnel list is compared with the aggregated ride list;

transmitting the missing personnel list from the host computer to the computer processor; and

displaying the missing personnel list on the display device in the at least one first responder vehicle at the hazardous site.

The Examiner's Rejections

Claims 15–17 stand rejected under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter. Final Act. 2–4.

Claims 15–17 stand rejected under 35 U.S.C. § 102(e) as anticipated by McClanahan (US 2008/0297341 A1; pub. Dec. 4, 2008). Final Act. 5–7.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments (Appeal Brief) that the Examiner has erred. We are unpersuaded by Appellants' contentions and agree with and adopt the Examiner's findings and conclusions in (i) the action from which this appeal is taken (Final Act. 2–7) and (ii) the Answer (Ans. 2–8) to the extent they are consistent with our analysis below.

REJECTION UNDER 35 U.S.C. § 101

Principles of Law

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws 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 *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The Supreme Court in *Alice* reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 79 (2012), “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.

The first step in that analysis is to determine whether the claims at issue are directed to one of those patent-ineligible concepts, such as an abstract idea. Abstract ideas may 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 claims are not directed to a patent-ineligible concept, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “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 79, 78). We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or

instead are 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).

Alice Step 1

Considering the first part of the *Alice/Mayo* analysis, the Examiner concludes the claims are directed to the abstract idea of “Collecting and Saving Data from Users (RFID Polling Data - Electronic Ride List), Continuously Collecting and Saving Data from Users (RFID Polling Data - Real-time Roll Call List)” and “Comparing saved data based on saved rules (Electronic Ride List vs. Real-time Roll Call List), Transmitting results of data comparison (missing personnel list) to central database, Collecting and saving data (aggregated missing personnel data), Generating/Transmitting aggregated missing personnel based on saved rules.” Final Act. 2–3. The Examiner finds the recited steps are similar to methods of organizing human activities including organizing and transmitting information, and comparing new and stored information (similar with court-defined abstract idea in *SmartGene*).³ Final Act. 3.

Appellants contend the Examiner erred. *See* Br. 6–7. Appellants argue the claims “do not define human organization in some academic fashion or abstract data manipulation for the sake of mere academic interest,” which allows “alerting first responders that a member of their own is unaccounted for or is missing at a hazardous site.” Br. 6. Appellants further argue the claimed subject matter overcomes problems of “[w]hen the [firefighters] left the hazardous site, there was no way for their incident

³ We understand the Examiner as referring to *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x 950 (Fed. Cir. 2014).

commanders to know automatically whether any [firefighter], who did not return to his original vehicle, was missing or was on another truck.” *Id.*

We agree with the Examiner that the claims are directed to a method of organizing human activity including: obtaining location information of individuals (“polling the plurality of active RFID transponders”), processing the information (“generating . . . an unaccounted personnel list,” “providing . . . the real-time roll call list,” and “generating . . . a missing personnel list”), and presenting the processed information (“transmitting” and “displaying the missing personnel list”). *See* Final Act. 2–3. In *SmartGene*, the Federal Circuit determined that claims for “comparing new and stored information and using rules to identify medical options” were directed to an abstract idea. 555 F. App’x at 951–52, 954–55. Also, like the claims here, the claims in *SmartGene* required a computer and a database, i.e., a “computing device,” databases (e.g., knowledge bases) for storing information and rules, and generating information based on the database information and rules. *See id.* at 951–52.

Appellants’ claims recite the abstract idea of obtaining data from RFID transponders and generating lists of real-time roll call and missing personnel along with generic computer terminology (e.g., “transponders,” “computer processor,” “display,” etc.). Thus, the claims are merely directed to the automation of manually obtaining presence data from transponders and processing a computer and database, i.e., a “host computer,” and a central database’s “unaccounted personnel list,” a “real-time roll call list,” and a “missing personnel list” described in Appellants’ Specification (*see, e.g.,* Spec. pp. 4–6) using generic computer components. Such an “improvement” in automating the process of data collection is not a

patentable improvement in computer technology. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015).

Moreover, as stated by the Examiner, our reviewing court has found similar methods to those in claim 15 to be abstract ideas. *See Ans. 3.*⁴ “[W]e have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (citations omitted). “In a similar vein, we have treated 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.” *Id.* at 1354. “And we have recognized that merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.” *Id.*

⁴ In addition to the decision in *Electric Power*, the Examiner also relies on the following decisions as examples of abstract idea: Data recognition and storage (*Content Extraction and Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343 (Fed. Cir. 2014)); Collecting and analyzing information to detect misuse and notifying a user when misuse is detected (*FairWarning IP v. Iatric Systems*, 839 F.3d 1089 (Fed. Cir. 2016)); Processes of organizing information that can be performed mentally (*Digitech Image Techs., LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014)); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307 (Fed. Cir. 2016)); Obtaining and comparing intangible data (*CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011)). *Ans. 3–4.*

Alice Step 2

Because the claims are directed to an abstract idea, we turn to the second part of the *Alice/Mayo* analysis. We analyze the claims to determine if there are additional limitations that individually, or as an ordered combination, ensure the claims amount to “significantly more” than the abstract idea. *Alice*, 134 S. Ct. at 2357.

The Examiner determines:

The claims do not recite additional elements that are sufficient to amount to significantly more than the judicial exception because: (A) the additional elements or combination of elements in the independent claims are recitation of generic computer structure (i.e. a processor to execute instructions to perform the method), which serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry, and do not add a meaningful limitation to the abstract idea because they would be routine in any computer implementation. The processor system in the instant application merely receives, processes and stores data.

Final Act. 3. Relying on page 3 of Appellants’ Specification, the Examiner finds the recited term “active RFID” and other computer and network components are described as known and conventional such that “[t]aking the additional claimed elements individually and in combination, the RFID equipment components at each step of the process perform purely generic RFID functions/functionality (No new technology has been disclosed, No new use of well[-]known technology has been disclosed).” Final Act. 4.

Appellants argue that “the claims do not attempt to preempt the use of generic RFID readers by themselves, host computers by themselves, or computer processors by themselves in non-claimed fields.” Br. 7–8.

Appellants further rely on the utility and the field applications of their active

RFID for tracking first responders and argue their claims recite elements that are significantly more than the abstract idea and, therefore, transforms the claims into patent-eligible subject matter. Br. 8.

In response, the Examiner further explains:

Claims 15-17 recite the limitations of: Collecting and Saving Data from Users (RFID Polling Data - Electronic Ride List), Continuously Collecting and Saving Data from Users (RFID Polling Data - Real-time Roll Call List), Comparing saved data based on saved rules (Electronic Ride List vs. Real-time Roll Call List), Transmitting results of data comparison (missing personnel list) to central database, Collecting and saving data (aggregated missing personnel data), Generating/Transmitting aggregated missing personnel based on saved rules[.]

All of the claimed additional features to the abstract idea are nothing more than a ‘well-understood, routine, conventional activity.’

Ans. 3–4. The Examiner additionally concludes the additional elements recited in the dependent claims, similar to those of claim 15, “fail to transform the abstract idea that they recite into patent-eligible subject matter, because the claims simply instruct the practitioner to implement the abstract idea with routine, conventional activity.” Ans. 4. Relying on pages 4 and 5 of the Specification, the Examiner further determines, no new technology is recited and the claimed systems and components “are not directed to a specific improvement to computer functionality/technology.” *Id.*

We agree with the Examiner. Considered “both individually and as an ordered combination,” the computer device and program steps of Appellants’ claims add nothing that is not already present when the steps are considered separately. *See Alice*, 134 S. Ct. at 2355 (quotations omitted) (quoting *Mayo*, 566 U.S. at 78). 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). The claims do not, for example, purport to improve the functioning of the RFID, the processor or database, or how a roll call list and a missing personnel list is created and displayed. In fact, Appellants’ Specification describes collecting data by an “active RFID” as a generic RFID that is available in the market. *See* Spec. 5:12–22. Appellants’ Specification does not describe how this collection of information relates to the functioning of the computer or the manner an RFID functions. Nor do the claimed steps effect an improvement in any other technology or technical field. “At best, the claims describe the automation of the [abstract idea] through the use of generic-computer functions.” *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015). That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Also, as discussed above, Appellants have not persuasively argued, nor provided sufficient evidence why the claim recitations regarding polling the RFID transponders and generating an unaccounted personnel list, a real-time roll call list, and a missing personnel list are not routine computer functions. *See, e.g., Elec. Power Grp.*, 830 F.3d at 1355 (“We have repeatedly held that such invocations of computers and networks that are not even arguably inventive are insufficient to pass the test of an inventive concept in the application of an abstract idea.”) (quotations omitted); *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (“An abstract idea on ‘an Internet computer network’ or on a generic computer is still an abstract idea.”); *Alice*, 134 S. Ct. at 2358

(“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”).

Additionally, lack of preemption does not make the claims any less abstract. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (collecting cases); *Accenture Global Services, GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013); *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility”).

We, therefore, sustain the Examiner’s rejection of claims 15–17 under 35 U.S.C. § 101.

REJECTION UNDER 35 U.S.C. § 102

Appellants contend McClanahan does not disclose the claimed subject matter recited in claims 15–17. Br. 9. Appellants argue McClanahan “does not distinguish a host computer distinct from a computer processor” and “can only be interpreted as disclosing a host computer at the monitoring station, and as not disclosing a computer processor handling data processing elsewhere.” *Id.* Appellants further argue “[h]andling all of the data processing remotely at the monitoring station may be acceptable for McClanahan because McClanahan is dealing with an entirely different problem.” Br. 10. Appellants specifically assert

McClanahan is not dealing with the scenario of multiple cruise ships, all having the same trip itinerary at the same time, wherein a missing passenger may have gotten off his own ship, but having boarded a sister cruise ship, or not having boarded any of the ships. Likewise, McClanahan is not dealing with the scenario of multiple buses, all having the same field trip itinerary at the same time, wherein a missing passenger may

have gotten off his own bus, but having boarded a sister bus, or not having boarded any of the buses. McClanahan fails to even consider how to coordinate data from multiple ships or multiple buses. Gathering polling data from, for example, the dining room, the pool, and the exercise room, as in McClanahan, is not akin to gathering polling data from a plurality of first responder vehicles, as in the instant invention.

Id.

In response, the Examiner explains McClanahan compares unaccounted personnel list with the aggregated list of passengers using multiple transponders placed in different areas of the ship. Ans. 7; *see also* Final Act. 6. In other words, the Examiner characterizes collecting data from the transponders in smaller areas in the ship and aggregating the data from the list corresponding to each area as the recited “generating by the host computer an aggregated ride list . . . from the plurality of first responder vehicles.”

We are persuaded by Appellants’ contentions that the Examiner erred. Although in McClanahan, as stated by Appellants (Br. 10), “a missing person’s identification code is compared to all of the identification codes transmitted by the transceivers to the monitoring station to determine where in the ship the identification code is” (*see* McClanahan ¶¶ 9, 13), there is no “reason to generate a dining room passenger list, a pool passenger list, and an exercise room passenger list, let alone a reason to generate some warning if a passenger is missing from the dining room passenger list, the pool passenger list, or the exercise room passenger list.” *Id.* That is, McClanahan does not necessarily disclose “generating . . . a missing personnel list, after the unaccounted personnel list is compared with the

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aggregated ride list” and “displaying the missing personnel list,” as claim 15 requires. *See* Br. 12.

Accordingly, we do not sustain the 35 U.S.C. § 102(e) rejection of claim 15, or claims 16 and 17 dependent therefrom.

DECISION

We affirm the rejection of claims 15–17 under 35 U.S.C. § 101, but reverse the rejection of claims 15–17 under 35 U.S.C. § 102(e). Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner’s rejection of claims 15–17 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).

AFFIRMED