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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JI FANG, VICTORIA M. E. BELLOTTI, DANIEL G. BOBROW, and TRACY HOLLOWAY KING

Appeal 2017-008390
Application 12/018,511
Technology Center 3600

Before: JOSEPH L. DIXON, JOHN A. JEFFERY, and JENNIFER L. McKEOWN, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants[1] appeal under 35 U.S.C. § 134(a) from the Examiner's decision to reject claims 1–25. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants' invention recommends activities to a user based on information extracted from received content, including temporal information. *See generally* Abstract. Claim 1 is illustrative:

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[1] Appellants identify the real party in interest as Palo Alto Research Center, Inc. App. Br. 1.

> 1. A computer-executed method for recommending activities, the method comprising:
>
> receiving, by a server of an activity recommender system, a message from a mobile device belonging to a user, wherein the mobile device receives the message from another device or is entered into the user's mobile device by the user;
>
> analyzing, by a processor of the server of the activity recommender system, message content to extract information contained in the received message by performing operations comprising:
>
> identifying an activity type;
>
> identifying an indication of willingness to participate in the identified activity type;
>
> determining implicit temporal information from linguistic cues of tense information in the message content of the message received from the mobile device, and from the identified activity type, including assigning a system running time of the server as the value of an activity time if the received message is in the present tense and assigning a default activity time if the message is not in the present tense; and
>
> determining location information associated with an activity of the identified activity type;
>
> generating, by the activity recommender system, an entry for the extracted information in a repository; and
>
> generating, from the extracted information, a recommendation that includes one or more activities, venues, and/or services that afford or support activities for the user.

THE REJECTIONS[2]

The Examiner rejected claims 1–25 under 35 U.S.C. § 101 as directed to ineligible subject matter. Final Act. 14–18.[3]

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[2] Because the Examiner withdrew (1) the written description rejection of claim 24, and (2) the obviousness rejections of claims 7–25 (Ans. 2–3), those rejections are not before us.

[3] Throughout this opinion, we refer to (1) the Final Rejection mailed June 9, 2016 ("Final Act."); (2) the Appeal Brief filed November 1, 2016 ("App.

The Examiner rejected claims 1–6 under 35 U.S.C. § 103 as unpatentable over Bell (US 2003/0200192 A1; published Oct. 23, 2003), Robertson (US 2007/0185744 A1; published Aug. 9, 2007), Hong Joo Lee et al., *Context-Aware Recommendations on the Mobile Web*, OTM WORKSHOPS 2005, LNCS 3762 142–51 (2005) ("Lee"). Final Act. 19–26.

THE INELIGIBILITY REJECTION

The Examiner finds that the claimed invention is directed to an abstract idea, namely analyzing received activity information, and generating an information entry and recommendation, which is said to be directed to an idea of itself and organizing activities. *See* Final Act. 14, 18. According to the Examiner, the claimed elements do not add significantly more to the abstract idea to render the claimed invention patent-eligible because, among other things, the claims lack a transformation, are not tied to a particular machine, and do not improve a specific technology or the computer itself. *See* Final Act. 14–18. The Examiner adds that the claims recite generic computer components that perform functions that merely implement the abstract idea on a computer. *See* Final Act. 16–17; Ans. 10, 15–17.

Appellants argue that the claimed invention is not directed to an abstract idea, but rather improves computer capabilities by reciting a recommender system that extracts implicit information implied in user messages, including temporal information, and identifies whether the user is interested in a certain activity or activity type. App. Br. 13–25. According

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Br."); (3) the Examiner's Answer mailed March 23, 2017 ("Ans."); and (4) the Reply Brief filed May 17, 2017 ("Reply Br.").

to Appellants, the claimed invention improves the computer's functionality by making more accurate recommendations based on the particular recited linguistic analysis techniques. Reply Br. 8–14.

Appellants add that even if the claimed invention was directed to an abstract idea, the claimed invention nevertheless recites significantly more than the alleged abstract idea by not only improving the computer's functionality, but also improving another technology, namely recommender systems, by using extracted information to make more accurate recommendations. App. Br. 25–28; Reply Br. 8–16.

ISSUE

Has the Examiner erred in rejecting claim 1 by concluding that it is directed to ineligible subject matter under § 101? This issue turns on whether the claimed invention is directed to a patent-ineligible abstract idea and, if so, whether the claim's elements—considered individually and as an ordered combination—transform the nature of the claim into a patent-eligible application of that abstract idea.

ANALYSIS

To determine whether claims are patent eligible under § 101, we apply the Supreme Court's two-step test articulated in *Alice Corp. Proprietary Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014). First, we determine whether the claims are directed to a patent-ineligible concept: laws of nature, natural phenomena, and abstract ideas. *Id.* at 2354–55. If so, we then proceed to the second step and examine the claim's elements—both individually and as an ordered combination—to determine whether the claim

contains an "inventive concept" sufficient to transform the claimed abstract idea into a patent-eligible application. *Id.* at 2357.

Alice Step One

Applying *Alice* step one, we agree with the Examiner that the claimed invention is directed to an abstract idea, namely analyzing received activity information, and generating an information entry and recommendation. *See* Final Act. 14, 18. Claim 1 recites, in pertinent part, analyzing content[4] of a message received from a mobile device to extract information in the message by (1) identifying an activity[5] type and an "indication of willingness" to participate in the identified type; (2) determining implicit temporal information from linguistic cues of the message's tense information, including (a) assigning a system running time of the server if the received message is in the present tense, and (b) assigning a default activity time if the message is not in the present tense; and (3) determining location information associated with an activity of the identified activity type. In addition, the claimed invention generates (1) an entry for the extracted information in a repository, and (2) a recommendation including one or more activities, venues, and/or services that afford or support user activities.

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[4] According to the Specification, "content" is any text a user sends, receives, or inputs to a computing device, or any texts extracted from user speeches. Spec. ¶ 21.

[5] According to the Specification, an "activity" is a set of physical and/or mental actions performed over a time period (typically a few minutes) to accomplish a cognitive goal of which the user is consciously aware. Spec. ¶ 21.

In essence, the claimed invention makes recommendations based on information extracted from received messages. Given this fundamental data analysis function, we agree with the Examiner that the claimed invention is directed to an abstract idea despite Appellants' arguments to the contrary (App. Br. 13–25; Reply Br. 8–16).

It is well settled that collecting information is within the realm of abstract ideas—even when the information is limited to particular content. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). It is also well settled that analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, are essentially mental processes within the abstract idea category. *Id.* at 1354. And 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.* Similar to the claims at issue in *Electric Power*, the claimed invention here gathers, manipulates, analyzes, and presents information of a specified content, but does not use any particular inventive technology for performing those functions.

Extracting data from a collected data set is likewise abstract. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (holding ineligible claims directed to (1) collecting data; (2) recognizing certain data within the collected data set; and (3) storing the recognized data in memory). Therefore, analyzing message content to extract information in the message in the claimed invention, like the data extraction in *Content Extraction*, is an abstract idea.

We find unavailing Appellants' contention that the claimed invention improves computer capabilities by reciting a recommender system that extracts implicit information implied in user messages, including temporal information, and identifies whether the user is interested in a certain activity or activity type. *See* App. Br. 13–25.

To be sure, the recited message content analysis determines, among other things, implicit temporal information from "linguistic cues" of the received message's tense information, and (a) assigns a system running time of the server if the received message is in the present tense, and (b) assigns a default activity time if the message is not in the present tense. For example, if a received message says "I am watching Finding Nemo," User Content Extraction Engine (UCEE) 204 in Figure 2 returns the time when the message was received as the activity time because the message is in the present tense. Spec. ¶ 35. But if the message said "let's go shopping," the system would use a default activity time because the message is not in the present tense. *Id.* ¶ 36.

But the claimed invention is not directed to improving the computer's operation by, for example, improving its speed and efficiency, but rather makes recommendations based on information extracted from received messages with general-purpose computing components—functions that could otherwise be performed manually. Although these functions may be beneficial by basing recommendations on a user's past, present, or future status with respect to a particular activity as indicated in a received message, a claim for a useful or beneficial abstract idea is still an abstract idea. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379–80 (Fed. Cir. 2015).

Nor are we persuaded that the claimed invention improves the computing devices' functionality or efficiency, or otherwise changes the way those devices function, at least in the sense contemplated by the Federal Circuit in *Enfish LLC v. Microsoft Corporation*, 822 F.3d 1327 (Fed. Cir. 2016), despite Appellants' arguments to the contrary (App. Br. 14–17; Reply Br. 11). The claimed self-referential table in *Enfish* was a specific type of data structure designed to improve the way a computer stores and retrieves data in memory. *Enfish*, 822 F.3d at 1339. To the extent Appellants contend that the claimed invention uses such a data structure to improve a computer's functionality or efficiency, or otherwise change the way that device functions (*see* App. Br. 14–17; Reply Br. 11), there is no persuasive evidence on this record to substantiate such a contention.

To be sure, the court in *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1299–1300 (Fed. Cir. 2016) held that a claim directed to using accounting information with which a network accounting record is correlated to *enhance* the record was held eligible because the claim involved an *unconventional* technological solution (enhancing data in a distributed fashion) to a technological problem (massive record flows which previously required massive databases). Although the court recognized that this solution used generic components, the recited enhancing function necessarily required these generic components to operate in an *unconventional* manner to achieve an improvement in computer functionality. *Id.* at 1300–01. Notably, the recited enhancement in *Amdocs* depended on not only the network's distributed architecture, but also on the network devices and "gatherers" working together in a distributed environment. *Id.* at 1301. In reaching its eligibility conclusion, the court

noted the patent's emphasis on the drawbacks of previous systems where all network information flowed to one location making it very difficult to keep up with massive record flows from network devices and requiring huge databases. *Id.* at 1300. The court also noted similar network-based drawbacks that were overcome by similar unconventional distributed solutions in other patents at issue. *See id.* at 1305–06.

That is not the case here. Although the claimed invention uses conventional computing components that receive and process data, there is no persuasive evidence on this record to show that these generic components operate in an *unconventional* manner to achieve an improvement in computer functionality as in *Amdocs*.

Appellants' reliance on *DDR Holdings, LLC v. Hotels.Com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) on page 11 of the Reply Brief is likewise unavailing. There, instead of a computer network operating in its normal, expected manner by sending a website visitor to a third-party website apparently connected with a clicked advertisement, the claimed invention in *DDR* generated and directed the visitor to a hybrid page that presented (1) product information from the third party, and (2) visual "look and feel" elements from the host website. *DDR*, 773 F.3d at 1258–59. Given this particular Internet-based solution, the court held that the claimed invention did not merely use the Internet to perform a business practice known from the pre-Internet world, but rather was necessarily rooted in computer technology to overcome a problem specifically arising in computer networks. *Id.* at 1257.

That is not the case here. As noted previously, Appellants' claimed invention, in essence, makes recommendations based on information

extracted from received messages. The claimed invention is not necessarily rooted in computer technology in the sense contemplated by *DDR* where the claimed invention solved a challenge particular to the Internet. Although Appellants' invention uses a server that receives messages from a mobile device, it does not solve a challenge particular to that network. That Appellants admit that the claimed method can be performed by a general-purpose computer (Reply Br. 11) only bolsters the notion that the claimed invention does not focus on an improvement in computers as tools, but rather certain independently abstract ideas that use computers as tools. *See Elec. Power*, 830 F.3d at 1354. *Accord* Ans. 16 (noting the general-purpose computer components in Appellants' Figure 5 and paragraph 61).

We, therefore, agree with the Examiner that claim 1 is directed to an abstract idea.

Alice Step Two

Turning to *Alice* step two, the recited elements—considered individually and as an ordered combination—do not transform the nature of claim 1 into a patent-eligible application of the abstract idea to ensure that the claim amounts to significantly more than that idea. *See Alice*, 134 S. Ct. at 2357.

That the recited method is executed by a server-based processor does not change our conclusion. As the Examiner explains, the claimed invention merely uses generic computing components to perform the recited abstract idea, namely making recommendations based on information extracted from received messages. *See* Final Act. 16–17; Ans. 10, 15–19. Merely reciting these generic computing components cannot transform a patent-ineligible

abstract idea into a patent-eligible invention. *See Alice* 134 S. Ct. at 2358–59; *see also Mortgage Grader Inc. v. First Choice Loan Services, Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016) (noting that components such an "interface," "network," and "database" are generic computer components that do not satisfy the inventive concept requirement); *buySAFE v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) ("That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.").

Indeed, the recited generic computing components merely do that which can be performed mentally or with pen and paper—exclusive functions ineligible for patent protection under § 101. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011). For example, a human can analyze received message content to extract information as claimed by merely reading and interpreting the message's content, including drawing inferences from that content, based on its context, grammar, and usage. Based on this interpretation, we see no reason why a human could not determine whether the message is in the present tense and, based on this determination, and assign either a system running time of the server or some default time as an "activity time" as claimed. That the claims do not specify *how* the recited assignment occurs apart from its performance by a server-based processor only underscores the breadth of this limitation which, as noted above, can otherwise be performed manually. We reach a similar conclusion regarding the entry and recommendation generation steps for, here again, despite their performance by a server-based processor, these steps could otherwise be performed manually.

To the extent that Appellants contend that the recited functions could not otherwise be performed manually (*see* App. Br. 24–25), there is no persuasive evidence on this record to substantiate such a contention. Even assuming, without deciding, that there is no *profession* where someone would routinely, "in their heads," (1) receive a message from a mobile device, (2) analyze message content to extract information, and (3) generate recommendations from the extracted information as Appellant contends (*id.*), that does not mean that these functions could not otherwise be performed entirely mentally or with pen and paper. *See CyberSource*, 654 F.3d at 1372.

Nevertheless, even assuming, without deciding, that the recited components add efficiency, any speed increase comes from the capabilities of the generic computer components—not the recited process itself. *See FairWarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016) (citing *Bancorp Services, LLC v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) ("[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.")). Like the claims in *FairWarning*, the focus of claim 1 is not on an improvement in computer processors as tools, but on certain independently abstract ideas that use generic computing components as tools. *See FairWarning*, 839 F.3d at 1095 (citations and quotation marks omitted).

In short, merely reciting these generic computing components cannot transform a patent-ineligible abstract idea into a patent-eligible invention. *Id.* at 2358. In other words, merely reciting an abstract idea while adding the words "apply it with a computer" does not render an abstract idea non-

abstract: there must be more. *See Alice*, 134 S. Ct. at 2359. Nor does the claimed invention improve the processor's functionality or efficiency, or otherwise change the way that device functions. *Cf. Enfish*, 822 F.3d at 1335. Appellants' contention, then, that the claimed invention adds significantly more to the abstract idea by improving not only the computer's functionality, but also recommender systems by using extracted information to make more accurate recommendations (App. Br. 25–28; Reply Br. 8–16), is unavailing.

We also find unavailing Appellants' contention that the recited implicit temporal information determination, including the particular activity time assignments depending on the received message's tense, are not well-understood, routine, and conventional because the Examiner allegedly failed to find references disclosing conventional technology that collectively disclose the elements of claim 1. Reply Br. 10, 16. This argument is not germane to the Examiner's findings in this regard, namely that adding a generic computer to perform generic functions that are well-understood, routine, and conventional, such as identifying data, receiving data, determining data, and transmitting data, does not render the claim eligible. *See* Ans. 10, 18–19. Notably, the Examiner finds that adding a generic computer would be nothing more than a *purely conventional computerized implementation* of the recited data collection and manipulation that does not add significantly more to the abstract idea. Ans. 10, 18. Therefore, the Examiner did not find that recited implicit temporal information determination, including the particular activity time assignments depending on the received message's tense, is well-understood, routine, and conventional, but rather the *computerized implementation* of an otherwise

abstract idea that employs that determination. Appellants do not persuasively rebut the Examiner's findings in this regard.

Lastly, to the extent that Appellants intend to argue the limitations of the dependent claims separately with respect to their eligibility under § 101, such as claims 3, 6, 7, 24, and 25 (*see* Reply Br. 11–12, 14–15), these separate arguments were raised for the first time in the Reply Brief and are, therefore, waived as untimely. *See* 37 C.F.R. § 41.41(b)(2). Nor has good cause been shown to present these arguments for the first time in the Reply Brief.

For the foregoing reasons, then, the recited elements—considered both individually and as an ordered combination—do not contain an "inventive concept" sufficient to transform the claimed abstract idea into a patent-eligible application. Therefore, we are not persuaded that the Examiner erred in rejecting claims 1–25 as ineligible under § 101.

THE OBVIOUSNESS REJECTION

Regarding claim 1, the Examiner finds that Bell, among other things, (1) determines implicit temporal information from linguistic cues of tense information in the content of a message received from a mobile device, and (2) generates a recommendation from extracted information in the received message. Final Act. 19. Although the Examiner acknowledges that Bell does not (1) identify an indication of willingness to participate in an identified activity type, and (2) assign the server's system running time as the activity time value, the Examiner cites Robertson and Lee for teaching these respective features in concluding that the claim would have been obvious. Final Act. 19–21.

Appellants argue that the cited prior art does not determine implicit temporal information from linguistic cues of tense information in the content of a received message, let alone assign activity times depending on whether the message is in the present tense, as claimed. App. Br. 29–33; Reply Br. 16–18. According to Appellants, Lee does not analyze message content to assign an activity time, let alone assign such times based on tense information, but rather merely acquires time from a device's system clock as contextual information from which to make a recommendation. App. Br. 30–31; Reply Br. 17. Appellants add that not only do Bell and Robertson not cure Lee's deficiencies in this regard, but the Examiner's proposed combination changes the prior art's principle of operation. App. Br. 32–36.

ISSUE

Under § 103, has the Examiner erred in rejecting claim 1 by finding that Bell, Robertson, and Lee collectively would have taught or suggested a determining implicit temporal information from linguistic cues of tense information in the content of a received message, including assigning a system running time of the server if the received message is in the present tense, and, if not, assigning a default activity time?

ANALYSIS

We begin by noting that claim 1 recites two conditional limitations: (1) assigning a system running time of the server *if* the received message is in the present tense, and (2) assigning a default activity time *if* the message is not in the present tense. Our emphasis on the term "if" underscores these conditions that, in a recited method, need not be satisfied to meet the claim.

See Ex parte Schulhauser, No. 2013-007847, 2016 WL 6277792 (PTAB Apr. 28, 2016) (precedential); *see also* MANUAL OF PATENT EXAMINING PROCEDURE (MPEP) § 2111.04(II) (9th ed. Rev. 08.2017, Jan. 2018) (citing *Schulhauser*).

To be sure, one condition must occur from the recited tense determination: either the message is in the present tense or it is not. But *only one* condition need be satisfied to meet claim 1 under *Schulhauser*—not both. *Accord* Ans. 21 (construing claim 1 to only require a received message in the present tense). Therefore, to the extent that Appellants contend that both conditions must be satisfied to meet the claim given the conjunctive term "and" recited in connection with these conditions (*see* Reply Br. 17–18), such an argument is unavailing and not commensurate with the scope of the claim.

Nevertheless, we find the Examiner's obviousness rejection problematic on this record, for the cited prior art does not teach or suggest assigning an activity time based on whether a received message is in the present tense. In the rejection, the Examiner cites Bell's paragraphs 57 and 58 for teaching determining implicit temporal information from linguistic cues of tense information in a received message. Final Act. 19. Notably, Bell's Topical, Temporal, and Location (TTL) logic 200 uses lexical and semantic rules to parse acquired textual information to find associated topic, time, and location attributes. Bell ¶¶ 57, 63; Figs. 2–3. Although Bell does not specify the particulars of these lexical and semantic rules, Bell nonetheless indicates that lexical and semantic topical word searches use word identification and the meaning of the language. Bell ¶ 77.

The term "lexical" means "of or relating to words or the vocabulary of a language as distinguished from its grammar and construction." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 669 (10th ed. 1993) ("Merriam-Webster Dictionary"). Moreover, the term "semantic" means "of or relating to meaning in language," Merriam-Webster Dictionary at 1062, and, therefore, Bell's semantic rules at least relate to the meaning of language in the received content. Given these definitions, Bell's lexical and semantic rules are arguably at least tangentially related to the received content's tense because "tense" is "a distinction in the form of a verb to express distinctions of time or duration of the action or state it denotes." *See* Merriam-Webster Dictionary at 1215. That is, because Bell's lexical and semantic rules relate to words—including verbs—and their meaning, these rules are at least tangentially related to the tense information conveyed by these words.

Nevertheless, we cannot say—nor has the Examiner shown—that the prior art also teaches or suggests assigning a server's system running time as an activity time if a received message is in the present tense, as claimed.

The Examiner's reliance on Lee to cure this acknowledged deficiency is unavailing. *See* Final Act. 20–21; Ans. 19–21. Lee applies context information to recommend relevant services or content to a user, where this context information includes the current time according to a device's or server's system clock. *See* Lee 142–43, 145. Although Lee's system effectively assigns a server's running time as an "activity time" at least with respect to the user's context information and associated recommendations, it does not do so based on whether the received message is in the present tense.

Indeed, there are no apparent conditions upon which Lee's system uses (or assigns) this server time value for contextual purposes, much less

that it is assigned if a received message is in the present tense. Nor does Robertson cure that deficiency. To the extent that the Examiner finds that Bell determines whether received content is in the present tense, and that such a determination could somehow be used as a basis for assigning an activity time as claimed in light of Lee (*see* Final Act. 21), such a position is untenable on this record.

Therefore, we agree with Appellants that the cited prior art does not teach or suggest the recited determination including assigning activity times based on whether the received message is in the present tense. Accordingly, we are persuaded that the Examiner erred in rejecting (1) independent claim 1, and (2) dependent claims 2–6 for similar reasons. Because this issue is dispositive regarding our reversing the Examiner's obviousness rejection of these claims, we need not address Appellants' other associated arguments.

CONCLUSION

The Examiner did not err in rejecting claims 1–25 under § 101, but erred in rejecting claims 1–6 under § 103.

DECISION

We affirm the Examiner's decision to reject claims 1–25. Because the rejection of each appealed claim is affirmed on at least one of the grounds specified in the Office Action from which the appeal was taken, the Examiner's decision to reject claims 1–25 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