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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SEAN MICHAEL BRUNCH and BRADLEY HOPKINS[1]

Appeal 2017-008495
Application 14/153,025
Technology Center 3600

Before ROBERT E. NAPPI, JENNIFER L. McKEOWN and JAMES W. DEJMEK, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants 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

The invention is directed to a method for combining information from different data sets, such as social networks, advertising networks, and/or panels, each data set comprising statistics about past viewership of

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

advertisements. Abstract. Claim 1 is illustrative of the invention and are reproduced below.

1. A computer-implemented method comprising:

accessing panel data obtained from a surveying panel and comprising numerical statistics corresponding to households of viewers chosen to be statistically representative of an overall audience and having had viewer survey answers confirmed before inclusion within the surveying panel, the statistics comprising numbers of clicks on advertisements;

accessing social networking data obtained from a social networking system and comprising numerical statistics corresponding to individual users of the social networking system and obtained via client device usage by the individual users after validation of identities of the individual users through social networking system logins, the statistics comprising numbers of clicks of the individual users on advertisements while using the social networking system, the social networking data further comprising personal information about the individual users that is manually entered by the individual users;

computing an estimation model using both the panel data and the social networking data by application of at least one of supervised machine learning, Bayesian techniques, and weighting segments;

accessing first statistics for an advertisement from the surveying panel and second statistics for the advertisement from the social networking system; and

computing estimated viewing statistics for the advertisement with respect to an audience comprising a plurality of people, at least in part by providing the first statistics and the second statistics as input to the estimation model.

EXAMINER'S REJECTIONS[2]

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

The Examiner has rejected claims 1 through 5, 8 through 12, and 15 through 19 under 35 U.S.C. § 103 as being unpatentable over Fordyce (US 2011/0087550 A1; Apr. 14, 2011), Doyle (US 2009/0320101 A1; Dec. 24, 2009), and Leggetter (US 2009/0187465 A1; July 23, 2009)). Final Act. 6.

The Examiner has rejected claims 6 and 13 under 35 U.S.C. § 103 as being unpatentable over Fordyce, Doyle, Leggetter, and Chien (US 2010/0082360 A1; Apr. 1, 2010). Final Act. 12.

The Examiner has rejected claims 7, 14 and 20 under 35 U.S.C. § 103 as being unpatentable over Fordyce, Doyle, Leggetter, and Chandler-Pepelnjak (US 2003/0074252 A1; Apr. 17, 2003). Final Act. 13.

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

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[2] Throughout this Decision we refer to the Appeal Brief ("App. Br.") filed January 18, 2017, the Reply Brief ("Reply Br.") filed May 22, 2017, Final Office Action ("Final Act.") mailed March 18, 2016, and the Examiner's Answer ("Ans.") mailed March 23, 2017.

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 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

We have reviewed Appellants' arguments in the Briefs, the Examiner's rejections, and the Examiner's response to Appellants' arguments. Appellants' arguments have persuaded us of error in the Examiner's rejection under 35 U.S.C. § 103. However, Appellants' arguments have not persuaded us of error in the Examiner's conclusion that the claims are directed to patent-ineligible subject matter.

Rejection under 35 U.S.C. § 101

Appellants argue that the Examiner's rejection of claim 1 under 35 U.S.C. § 101 is in error as a) the Examiner has not provided a reasoned rationale, citing court decisions to show that the claim is directed to an abstract idea; b) when viewed in light of the decision in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), the claims do not recite an abstract concept; and c) the claims recite significantly more and are similar to those at issue in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). App. Br. 8–17; Reply Br. 2–8. Specifically, Appellants argue " [l]ike the claims in McRO, these claims do

not generically recite an abstract result, or automate an existing human process. Instead the claims at issue incorporate features that limit the claims to a specific process of improving estimation of viewing statistics." App. Br. 14. Further, Appellants state:

> Rather, the features recited in the accessing of the social networking data-such as validation of identities of the individual users through social networking system logins-are inherently specific to computer networks and address the technical problem of tying the social networking statistics to individual users, which allows the social networking data to complement and correct the panel data, thereby ultimately resulting in a more useful estimation model. …. Thus, claim 1 and the other claims "do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR*, p. 20
> App. Br. 17.

The Examiner has provided a detailed and comprehensive response to Appellants' arguments on pages 3 through 19 of the Answer. In this Answer, the Examiner provides a detailed response comparing the claims at issue to claims found to be abstract by the courts. Answer 3–9 (citing: *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016), *FairWarningIP, LLC v. Iatric Sys., Inc.,* 839 F.3d 1089, 1094 (Fed. Cir. 2016), *Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057, 1064 (Fed. Cir. 2011), *CyberSource Corp. v. Retail Decisions Inc.,* 654 F.3d 1366, 1371 (Fed. Cir. 2011), *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016), *Parker v. Flook*, 437 U.S. 584 (1978), and *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014). Further,

with respect to Appellants' arguments that when the claim does not recite an abstract concept when considered in light of the decision in *McRO,* the Examiner finds that the claimed concept of combining data from different sources into a single set has been held to be well-known and abstract. Answer 10 (citing *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.* 758 F.3d 1344 (Fed Cir. 2014)). Further, the Examiner finds that the claims are not directed to overcome a problem specifically arising in the realm of computer networks and is thus unlike the claims at issue *McRO.* Answer 10-12 (citing *DDR* and *McRO*). Finally, with respect to Appellants' argument that the claims recite significantly more than the abstract idea, the Examiner concludes that claims use of the Internet to gather data is merely reciting the use of generic computer functions to implement the abstract idea and as such are not drawn to significantly more. Additionally, the Examiner states that the use of a social networking system to gather data is merely an insignificant data-gathering step and does not transform the abstract idea to recite significantly more. Answer 13–16.

We have reviewed and concur with the Examiner's rationale, findings and conclusions. We add the following for emphasis, as found by the Examiner the claim steps of accessing panel data, social networking data and accessing statistics are merely steps of gathering or collecting data which the similar to limitations held to be abstract by the court in *Electric Power*, 830 F.3d at 1354 (holding that claims directed to a process of gathering and analyzing information of a specific content are directed to an abstract idea); and *Smart Sys. Innovations LLC v. Chi Transit Authority*, 873 F.3d 1364, 1372 (Fed. Cir. 2017) (holding that claims directed to data collection and a financial transaction in a particular file, are directed to an abstract idea).

Further, the steps of computing an estimation model and viewing statistics are merely steps directed to performing mathematical operations (an analysis) on the gathered data, which are similarly abstract.

We are not persuaded by Appellants' argument that the claim recites use of social media data to improve estimating view statistics and, as such, is technical improvement. Reply Br. 3–4. Similar to the claims at issue in *Electric Power*, the claims are focused "on a process of gathering and analyzing information of a specific content … and not any particular assertedly inventive technology for performing those functions" and, as such, are directed to an abstract idea. *Electric Power*, at 1354. We note Appellants' Specification identifies that web sites such as social networking sites are known sources of data and, as such, we do not consider the use of data from a social network site to be an inventive technology. *See* Specification ¶ 5.

Further, we are similarly not persuaded by Appellants' argument that the claims that compute estimated viewing statistics are drawn to something more than the abstract concept. Selecting information for collection and analysis, which do not recite a new source or type of information, does not transform an otherwise abstract process of information collection and analysis. *Electric Power*, at 1354–55. Additionally, we are not persuaded by Appellants' argument that the use of a social media network squarely roots the claims in a computer technology and, as such, solves an "Internet-centric problem" App. Br. 16–17 (relying on DDR to show significantly more). The claims are not solving a problem related to a social media network or a computer-centric problem, rather, as discussed above, the

recitation of the social media network is just a source of data. As Appellants' arguments are unpersuasive of error, we sustain the Examiner's rejection of claim 1 under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter.

Appellants' arguments directed to the Examiner's rejection under 35 U.S.C. § 101, group claims 1 through 20 together. App. Br. 6. Thus, we also sustain the Examiner's rejection of claims 2 through 20 under 35 U.S.C. § 101.

Rejection under 35 U.S.C. § 103

Appellants' arguments directed to the obviousness rejection of independent claims 1, 8, and 15 present us with several issues. The dispositive issue is, whether the Examiner erred in finding the combination of Fordyce, Doyle, and Leggetter teaches or suggests the claimed feature of computing an estimation model using both the panel data and the social networking data as recited in each of independent claims 1, 8 and 15. App. Br. 20–22, Reply Br. 11–12. Specifically, Appellants assert that Fordyce describes "computing values of parameters of transaction profiles by building a statistically-based model" but does not suggest that the social networking data can be used to build the statically based model. Reply Br. 12.

The Examiner responds to these arguments finding that Fordyce teaches transaction profiles include values for building statistically based model that weighs values to optimize predictions. Answer 24 (citing Fordyce ¶¶ 53, 318). Further, in the Final Action the Examiner cites numerous additional paragraphs to support the finding that Fordyce teaches

the disputed limitation. *See* Final Act. 8 (citing ¶¶ 25–26, 45, 47, 51, 93, 127, and 136–137).

We have reviewed the paragraphs of Fordyce cited by the Examiner. The cited paragraphs do discuss the use of social media in conjunction with transaction data. *See* Fordyce ¶¶ 136–137. The cited paragraphs also discuss transaction data being used in a transaction profile, which includes a model. *See* Fordyce ¶ 0053. However, we do not find that the cited paragraphs discuss, nor does the Examiner provide an explanation of how Fordyce is applied to teach, using the social media data in conjunction in with the estimation model as claimed. Accordingly, we do not sustain the Examiner's rejection of independent claims 1, 8 and 15, and the rejection of claims 2 through 5, 9 through 12 and 16 through 19 which are similarly rejected.

The Examiner's rejection of dependent claims 6, 7, 13, 14, and 20 rely upon the same rationale for the limitations of the independent claims. Final Act. 12–14. Accordingly, we similarly do not sustain the Examiner's obviousness rejection of 6, 7, 13, 14, and 20.

DECISION

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

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

Because we affirm at least one ground of rejection with respect to each claim on appeal, the Examiner's decision rejecting claims 1 through 20 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) (2016).

AFFIRMED