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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHEN DENIS KIRKBY;
DAVID WALTER SKINNER; ROBERT LAWRENCE; and
WARREN HUTCHINSON

Appeal 2017-008517
Application 13/839,378¹
Technology Center 3600

Before JOHN A. JEFFERY, LARRY J. HUME, and JENNIFER L.
McKEOWN, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1, 3, 4, 7–9, 11–16, and 18–20, which are all claims pending in the application. Appellants have canceled claims 2, 5, 6, 10, and 17. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is Accenture Global Services Limited. App. Br. 3.

STATEMENT OF THE CASE²

The Invention

Appellants' disclosed embodiments and claimed invention relate to a marketing campaign management system. Spec., Title. More specifically, the disclosed and claimed campaign management system

includes a data collection subsystem to collect and store data from a plurality of different sources that may be related to a plurality of different marketing channels. The system also includes a map generation subsystem to generate a map that includes a visual representation of performance of the plurality of marketing channels. A performance metric adjustment factor may be determined for one or more performance metrics to determine an actual value performance metric for each metric. The actual value performance metrics may be aggregated and compared to benchmarks to generate a visual representation of the entire campaign performance across the plurality of data sources.

Spec. ¶ 3.

Exemplary Claim

Claim 1, reproduced below, is representative of the subject matter on appeal (*emphases* added to contested prior-art limitations):

1. An online campaign management system comprising:
 - a data collection subsystem to receive data for a plurality of different online marketing channels for a marketing campaign from a plurality of data sources and store the data in a

² Our decision relies upon Appellants' Appeal Brief ("App. Br.," filed Nov. 29, 2016); Reply Brief ("Reply Br.," filed May 19, 2017); Examiner's Answer ("Ans.," mailed Mar. 20, 2017); Final Office Action ("Final Act.," mailed July 1, 2016); and the original Specification ("Spec.," filed Mar. 15, 2013).

data store, each of the plurality of online marketing channels being a different medium for distribution of communications, wherein at least one of the different online marketing channels comprises an Internet marketing channel; and

a map generation subsystem comprising:

at least one processor;

performance metric determination machine readable instructions executable by the at least one processor to determine performance metrics for the plurality of different online marketing channels from the data for the plurality of different online marketing channels and calculate a value for each of the performance metrics for a marketing campaign map;

a low-latency data store to store the values for the performance metrics;

threshold determination machine readable instructions executable by the at least one processor to calculate a plurality of thresholds based on stored historical performance of the plurality of different online marketing channels, and compare the values for the performance metrics to the plurality of thresholds to determine whether the performance metrics are underperforming, potentially underperforming, or are satisfactory and store an indication of whether each of the performance metrics is underperforming, potentially underperforming or satisfactory based on the comparisons; and

map generator machine readable instructions executable by the at least one processor to generate the marketing campaign map in a single screen of a graphical user interface, *the marketing map comprising:*

a plurality of nodes connected by links,
the plurality of nodes including endpoint nodes

and a target node representing a goal for the marketing campaign, each of the endpoint nodes representing a respective different online marketing channel of the plurality of different online marketing channels, including at least one of a social media marketing channel, a website marketing channel, a search marketing channel including paid search, a natural search marketing channel, and a media asset marketing channel and providing marketing information pertaining to the performance metrics for the respective different online marketing channel; and

a data flow for each endpoint node, shown on a link of the plurality of links connecting the endpoint node to the target node, wherein each data flow shows a contribution of the respective marketing channel for the endpoint node to the goal, and the contribution is determined from the performance metric for the respective marketing channel,

wherein the at least one processor executing the performance metric determination machine readable instructions is to [sic] determine metrics associated with the goal from the performance metrics, and to determine a total based on the contributions of the data flows, and

wherein the at least one processor executing the map generator machine readable instructions is to:

display the metrics associated with the goal and the total with the target node in the marketing campaign map, and

update the marketing campaign map, including each data flow, to show the metrics associated with the goal, and the total, in real time based on recent values for the performance metrics retrieved from the low-latency data store.

Prior Art

The Examiner relies upon the following prior art as evidence in rejecting the claims on appeal:

Frazer et al. ("Frazer")	US 2010/0049538 A1	Feb. 25, 2010
Graff	US 2012/0005023 A1	Jan. 5, 2012
Hsiao et al. ("Hsiao")	US 2013/0021345 A1	Jan. 24, 2013

*Rejections on Appeal*³

R1. Claims 1, 3, 4, 7–9, 11–16, and 18–20 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Ans. 2.

R2. Claims 1, 3, 4, 7–9, 11, 13–16, 18, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Frazer and Hsiao. Final Act. 6.

R3. Claims 12 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Frazer, Hsiao, and Graff. Final Act. 14.

CLAIM GROUPING

Based on Appellants' arguments (App. Br. 30–37; Reply Br. 4–13) and our discretion under 37 C.F.R. § 41.37(c)(1)(iv), we decide the appeal of patent-ineligible subject matter Rejection R1 of claims 1, 3, 4, 7–9, 11–16, and 18–20 on the basis of representative claim 1; and we decide the appeal of obviousness Rejection R2 of claims 1, 3, 4, 7–9, 11, 13–16, 18, and 20 on

³ We note the Examiner replaced the § 101 rejection of claims 1, 3, 4, 7–9, 11–16, and 18–20 imposed in the Final Action (2) with a new ground of rejection of these claims under § 101 in the Answer (2).

the basis of representative claim 1. Remaining claims 12 and 19 in Rejection R3, not argued separately, stand or fall with the respective independent claim from which they depend.

ISSUES AND ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. To the extent Appellants have not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv).

Based upon our review of the record, we find a preponderance of the evidence supports particular arguments advanced by Appellants with respect to Rejection R2 of claim 1 for the specific reasons discussed below.

However, disagree with Appellants' arguments with respect to Rejection R1 of claim 1 and, unless otherwise noted, we incorporate by reference herein and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons and rebuttals set forth in the Examiner's Answer in response to Appellant's Appellants' arguments. We highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

1. § 101 Rejection R1 of Claims 1, 3, 4, 7–9, 11–16, and 18–20

Issue 1

Appellants argue (Reply Br. 4–9) the Examiner's rejection of claim 1 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is in error. These contentions present us with the following issue:

Under our governing case law concerning 35 U.S.C. § 101, did the Examiner err in concluding claim 1 is directed to a judicial exception, i.e., an abstract idea, without significantly more, and thus is patent-ineligible under § 101?

Analysis

Alice Framework

Section 101 provides that anyone who "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. 35 U.S.C. § 101. The Supreme Court has repeatedly emphasized that patent protection should not extend to claims that monopolize "the basic tools of scientific and technological work." *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012); *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). Accordingly, laws of nature, natural phenomena, and abstract ideas are not patent-eligible subject matter. *Alice Corp.*, 134 S. Ct. at 2354.

The Supreme Court's two-part *Alice* framework guides us in distinguishing between patent claims that impermissibly claim the "building blocks of human ingenuity" and those that "integrate the building blocks into something more." *Alice Corp.*, 134 S. Ct. at 2354 (internal quotation marks, citation, and bracketing omitted). First, we "determine whether the claims at issue are directed to [a] patent-ineligible concept[]." *Id.* at 2355. If so, we "examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Id.* at 2357 (quoting *Mayo*, 566 U.S. at 72, 79).

Although the two steps of the *Alice* framework are related, the "Supreme Court's formulation makes clear that the first-stage filter is a meaningful one, sometimes ending the § 101 inquiry." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). We note the Supreme Court "has not established a definitive rule to determine what constitutes an 'abstract idea'" for the purposes of step one. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct at 2357).

However, our reviewing court has held claims ineligible as directed to an abstract idea when they merely collect electronic information, display information, or embody mental processes that could be performed by humans. *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting cases). At the same time, "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. 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. *Alice* 134 S. Ct. at 2355–57. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Id.* at 2354 ("[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.").

Under the "abstract idea" step we must evaluate "the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (internal citation omitted). If the claims are not directed to a patent-ineligible concept, the inquiry ends. *See Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253,

1262 (Fed. Cir. 2017). If the concept is directed to a patent-ineligible concept, we proceed to the "inventive concept" step. For that second step we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an "inventive concept" in the application of the ineligible subject matter' to which the claim is directed." *Affinity Labs*, 838 F.3d at 1258 (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

Alice Step 1 — Abstract Idea

In the new ground of Rejection R1 under § 101 in the Answer, the Examiner concludes, "limitations [in the claims on appeal] are considered to set forth the abstract idea because the claims are directed toward a method of collecting information, analyzing it, and providing certain results of the collection analysis which has been found by the courts in *Electric Power Group* to be an abstract idea in and of itself." Ans. 3. The Examiner further concludes the "determining performance metrics," "calculating values for the performance metrics," "calculating a plurality of thresholds," "determining metrics associated with the goal," and "determining a total based on the contributions of the data flows," have "been found by the courts in *Abele* to be directed to the abstract idea of a mathematical relationship or formula. The concepts described in claim 1 are not meaningfully different than those concepts found by the courts to be abstract ideas." Ans. 3–4.⁴ We disagree with the Examiner's conclusions.

We agree with the Examiner's conclusions that the claims are directed to an abstract idea for the reasons discussed below.

⁴ Citing *In re Abele*, 684 F.2d 902 (CCPA 1982) (abrogated by *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008)).

Under the "abstract idea" step we must evaluate "the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs*, 838 F.3d at 1257 (citation omitted).

Turning to the claimed invention, claim 1 recites, in pertinent part, "map generator machine readable instructions executable by the at least one processor to generate the marketing campaign map in a single screen of a graphical user interface," "wherein the at least one processor executing the map generator machine readable instructions is to . . . update the marketing campaign map, including each data flow, to show the metrics associated with the goal, and the total, in real time based on recent values for the performance metrics retrieved from the low-latency data store." Claim 1.

Appellants contend "[s]imilar to the holding in *Trading Technologies*, the instant claims are associated with improvements in existing graphical user interface devices. Unlike conventional graphical user interfaces for mixed marketing channels, the claimed graphic user interface displays, simultaneously, the flow of real-time metrics across multiple marketing channels (*see* FIG. 4 of the present application)." Reply Br. 8 (citing non-published decision *Trading Technologies International, Inc. v. CQG, INC.*, 675 Fed.Appx. 1001 (Fed. Cir. 2017)).

Appellants generally contend the patentability of the claims on Appeal is not dictated by *Electric Power Group* or *Abele*. Reply Br. 4. More specifically, Appellants argue, "the claims recite elements that are sufficiently more than the asserted abstract idea" (*id.*), and

the claims describe in detail the generating and updating in real time of a marketing campaign map comprising a plurality of nodes and a data flow for each endpoint node. Contrary to the functions described in general terms in *Electric Power Group*, the claimed features are described in detail, and are significantly more than the mere collection, analysis, and display of available information.

Reply Br. 5–6.⁵

In *Electric Power Group*, the Federal Circuit held "merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas." *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016). In addition, "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.* at 1354–55.

We conclude the claims in *Electric Power Group* and our reviewing court's decision rendered therein to be more on point to this Appeal than the decision in *Trading Technologies*.

In *Electric Power Group*, representative claim 12 of U.S. Patent 8,401,710 recited:

12. A method of detecting events on an interconnected electric power grid in real time over a wide area and automatically analyzing the events on the interconnected electric power grid, the method comprising:

⁵ We note the "significantly more" argument is generally appropriate in a Step 2 *Alice* analysis.

receiving a plurality of data streams, each of the data streams comprising sub-second, time stamped synchronized phasor measurements wherein the measurements in each stream are collected in real time at geographically distinct points over the wide area of the interconnected electric power grid,

the wide area comprising at least two elements from among control areas, transmission companies, utilities, regional reliability coordinators, and reliability jurisdictions;

receiving data from other power system data sources, the other power system data sources comprising at least one of transmission maps, power plant locations, EMS/SCADA systems;

receiving data from a plurality of non-grid data sources; detecting and analyzing events in real-time from the plurality of data streams from the wide area based on at least one of limits, sensitivities and rates of change for one or more measurements from the data streams and dynamic stability metrics derived from analysis of the measurements from the data streams including at least one of frequency instability, voltages, power flows, phase angles, damping, and oscillation modes, derived from the phasor measurements and the other power system data sources in which the metrics are indicative of events, grid stress, and/or grid instability, over the wide area;

displaying the event analysis results and diagnoses of events and associated ones of the metrics from different categories of data and the derived metrics in visuals, tables, charts, or combinations thereof, the data comprising at least one of monitoring data, tracking data, historical data, prediction data, and summary data;

displaying concurrent visualization of measurements from the data streams and the dynamic stability metrics directed to the wide area of the interconnected electric power grid;

accumulating and updating the measurements from the data streams and the dynamic stability metrics, grid data, and non-grid data in real time as to wide area and local area portions of the interconnected electric power grid; and

deriving a composite indicator of reliability that is an indicator of power grid vulnerability and is derived from a combination of one or more real time measurements or computations of deriving a composite indicator of reliability that is an indicator of power grid vulnerability and is derived from a combination of one or more real time measurements or computations of measurements from the data streams and the dynamic stability metrics covering the wide area as well as non-power grid data received from the non-grid data source.

U.S. Patent 8,401,710, claim 12.

We conclude the limitations in this *Electric Power Group* claim are analogous to claim 1 on Appeal, although in a different field of use. Claim 12, above, and claim 1 on Appeal both collect and display real-time data from disparate sources using plural data streams.

In *Trading Technologies*, however, the Federal Circuit's holding that the particular graphical user interface claimed in that case was patent eligible turned on the District Court's distinction over prior-art graphical user interfaces:

Neither the claims of the '304 patent nor the claims of the '132 patent are directed to solely "setting, displaying, and selecting" data or information that is visible on the GUI device. Rather, the claims are directed to solving a problem that existed with prior art GUIs, namely, that the best bid and best ask prices would change based on updates received from the market. There was a risk with the prior art GUIs that a trader would miss her intended price as a result of prices changing from under her pointer at the time she clicked on the price cell on the GUI. The patents-in-suit provide a system and method whereby traders may place orders at a particular, identified price level, not necessarily the highest bid or the lowest ask price because the invention keeps the prices static in position, and allows the quantities at each price to change.

Trading Technologies International, Inc. v. CQG, Inc., 2015 WL 774655 *4
(N.D. Ill. 2015).⁶

⁶ Claim 1 in *Trading Technologies* reads as follows:

1. A method for displaying market information relating to and facilitating trading of a commodity being traded in an electronic exchange having an inside market with a highest bid price and a lowest ask price on a graphical user interface, the method comprising;

dynamically displaying a first indicator in one of a plurality of locations in a bid display region, each location in the bid display region corresponding to a price level along a common static price axis, the first indicator representing quantity associated with at least one order to buy the commodity at the highest bid price currently available in the market;

dynamically displaying a second indicator in one of a plurality of locations in an ask display region, each location in the ask display region corresponding to a price level along the common static price axis, the second indicator representing quantity associated with at least one order to sell the commodity at the lowest ask price currently available in the market;

displaying the bid and ask display regions in relation to fixed price levels positioned along the common static price axis such that when the inside market changes, the price levels along the common static price axis do not move and at least one of the first and second indicators moves in the bid or ask display regions relative to the common static price axis;

displaying an order entry region comprising a plurality of locations for receiving commands to send trade orders, each location corresponding to a price level along the common static price axis; and

in response to a selection of a particular location of the order entry region by a single action of a user input device, setting a plurality of parameters for a trade order relating to the commodity and sending the trade order to the electronic exchange.

We do not find such a distinction to be present in claim 1 on Appeal.

Therefore, under step one, we agree with the Examiner that the inventions claimed in each of independent claims 1, 14, and 20 are merely directed to the abstract idea of "collecting information, analyzing it, and providing certain results of the collection analysis." *See* Ans. 3.

Alice Step 2—Inventive Concept

If the claims are directed to a patent-ineligible concept, as we conclude above, we proceed to the "inventive concept" step. For that step we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an "inventive concept" in the application of the ineligible subject matter' to which the claim is directed." *Affinity Labs*, 838 F.3d at 1258 (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

In applying step two of the *Alice* analysis, our reviewing court guides we must "determine whether the claims do significantly more than simply describe [the] abstract method" and thus transform the abstract idea into patentable subject matter. *Ultramarcial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014). We look to see whether there are any "additional features" in the claims that constitute an "inventive concept," thereby rendering the claims eligible for patenting even if they are directed to an abstract idea. *Alice*, 134 S. Ct. at 2357. Those "additional features" must be more than "well-understood, routine, conventional activity." *Mayo*, 566 U.S. at 79.

Limitations referenced in *Alice* that are not enough to qualify as "significantly more" when recited in a claim with an abstract idea include, as

U.S. patent 6,772,132, Claim 1 (emphasis added).

non-limiting or non-exclusive examples: adding the words “apply it” (or an equivalent) with an abstract idea;⁷ mere instructions to implement an abstract idea on a computer;⁸ or requiring no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.⁹

Evaluating representative claim 1 under step 2 of the *Alice* analysis, we agree with the Examiner that it lacks an inventive concept that transforms the abstract idea of collecting information, analyzing it, and providing certain results of the collection analysis into a patent-eligible application of that abstract idea. *See* Ans. 4–6.¹⁰

⁷ *Alice*, 134 S. Ct. at 2357–58.

⁸ *Alice*, 134 S. Ct. at 2357, *e.g.*, simply implementing a mathematical principle on a physical machine, namely a computer (citing *Mayo*, 566 U.S. at 84–85).

⁹ *Alice*, 134 S. Ct. at 2359, *e.g.*, using a computer to obtain data, adjust account balances, and issue automated instructions.

¹⁰ The Examiner concludes:

The claim recites the additional limitations of a processor for executing machine readable instructions and a display for the marketing campaign map. The processor and display are generic computer components that perform the generic functions of displaying and executing instructions. The storing of values for the performance metrics in a data store and storing an indication of whether each of the performance metrics is underperforming, potentially underperforming or satisfactory based on the comparisons are generic and conventional computer functions. Generic computer components recited as performing generic computer functions that are well-understood, routine and conventional activities amount to no more than implementing the abstract idea with a computerized system.

Ans. 4.

We note the patent eligibility inquiry may contain underlying issues of fact. *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016). In particular, "[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact." *Berkheimer*, 881 F.3d at 1368.

As evidence of the conventional nature of the claimed network components and processes, we note Appellant's Specification in paragraphs 29–33 and 50. For example:

The computer system 200 includes processor(s) 201, such as a central processing unit, ASIC or other type of processing circuit, input/output devices 202, such as a display, mouse keyboard, etc., a network interface 203, such as a Local Area Network (LAN), a wireless 802.11x LAN, a 3G or 4G mobile WAN or a WiMax WAN, and a computer-readable medium 204. Each of these components may be operatively coupled to a bus 208. The computer readable medium 204 may be any suitable medium which participates in providing instructions to the processor(s) 201 for execution. For example, the computer readable medium 204 may be non-transitory or non-volatile medium, such as a magnetic disk or solid-state non-volatile memory or volatile medium such as RAM. The instructions stored on the computer readable medium 204 may include machine readable instructions executed by the processor(s) 201 to perform the methods and functions of the system 100.

Spec. ¶ 30.

We agree with the Examiner that the claim limitations may be broadly but reasonably construed as reciting conventional computer components and

techniques, particularly in light of Appellant's Specification, as quoted above.¹¹

With respect to the Step 2 analysis, we agree with the Examiner because, as in *Alice*, the recitation of an "online campaign management" using a "a data collection subsystem" and a "a map generation subsystem" using "a processor" (claim 1), is simply not enough to transform the patent-ineligible abstract idea here into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2357 ("[C]laims, which merely require generic computer implementation, fail to transform [an] abstract idea into a patent-eligible invention.").¹²

Accordingly, based upon the findings above, on this record, we are not persuaded of error in the Examiner's conclusion that the appealed claims are directed to patent-ineligible subject matter. Therefore, we sustain the Examiner's § 101 rejection of independent claim 1, and grouped claims 3, 4, 7–9, 11–16, and 18–20, not argued separately, and which fall therewith. *See Claim Grouping, supra*.

¹¹ During prosecution, claims must be given their broadest reasonable interpretation when reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under this standard, we interpret claim terms using "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

¹² Appellant merely alleges, "[s]imilar to the holding in *Trading Technologies*, the instant claims are associated with improvements in existing graphical user interface devices." Reply Br. 8.

2. § 103 Rejection R2 of Claims 1, 3, 4, 7–9, 11, 13–16, 18 and 20

Issue 2

Appellants argue (App. Br. 30–36; Reply Br. 10–13) the Examiner's rejection of claim 1 under 35 U.S.C. § 103(a) as being obvious over the combination of Frazer and Hsiao is in error. These contentions present us with the following issue:

Did the Examiner err in finding the cited prior art combination teaches or suggests "[a]n online campaign management system" that includes, *inter alia*, the limitations of "map generator machine readable instructions executable by the at least one processor to generate the marketing campaign map in a single screen of a graphical user interface, the marketing map comprising: *a plurality of nodes connected by links,*" and "*a data flow for each endpoint node, shown on a link of the plurality of links connecting the endpoint node to the target node,*" as recited in claim 1? (emphases added).

Analysis

The Examiner cites Hsiao at Figure 10 and paragraph 85 as teaching or suggesting the contested limitation. Final Act. 7; Ans. 10–12.

In response, Appellants contend:

As reproduced below, FIG. 10 and the cited portion of Hsiao appears to be directed to an interface to depict a number of individual, disconnected graphs.

Particularly, Hsiao specifically states, "FIG. 10 illustrates a sample user interface to display graphs of various channels in accordance with an illustrative embodiment. The sample user interface includes a number of graphs 1002, 1004, 1006, 1008, 1010, and 1014 that are generated in accordance with an illustrative embodiment." *Hsiao*, para. [0085]. None of the

depicted graphs are depicted as an endpoint node or a target node. As such, the cited portion does not teach or suggest "a plurality of nodes connected by links," as recited in independent claim 1.

Furthermore, because Hsiao, FIG. 10, depicts individual disconnected graphs, FIG. 10 and paragraph [0085] of Hsiao does not, and cannot, teach or suggest,

a data flow for each endpoint node, shown on a link of the plurality of links connecting the endpoint node to the target node [Emphasis added]

Therefore, the proposed combination of Frazer and Hsiao therefore fails to render independent claim 1 *prima facie* obvious.

Reply Br. 11–13. We agree with Appellants' argument with respect to the deficiencies of the teachings of Hsiao, and refer to Figure 10 of Hsiao for emphasis:

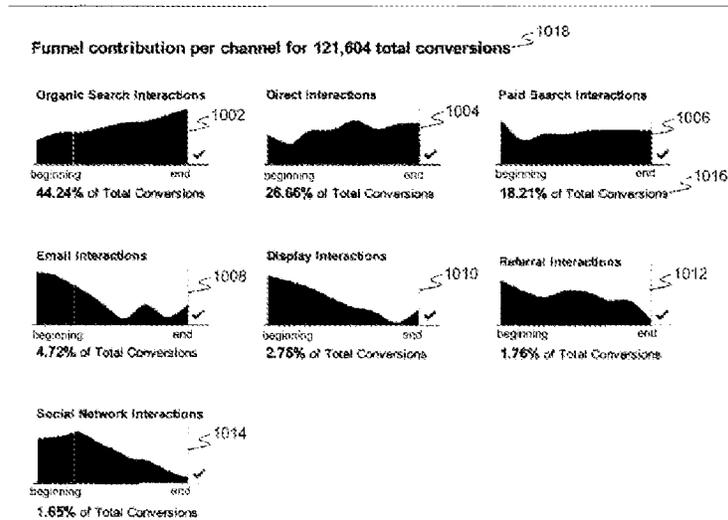


FIG. 10

Figure 10 of Hsiao illustrates a sample user interface to display graphs of various channels in accordance with an illustrative embodiment.

With respect to Figure 10, Hsiao further teaches:

A graph can be generated for a number of channels. In one embodiment, a graph is generated for every known channel. In another embodiment, a selective list of one or more channels is received, and a graph for each of the received channels is generated. FIG. 10 illustrates a sample user interface to display graphs of various channels in accordance with an illustrative embodiment. The sample user interface includes a number of graphs 1002, 1004, 1006, 1008, 1010, and 1014 that are generated in accordance with an illustrative embodiment. As illustrated, the area under the graph line can be filled in with a color. In addition to the graphs, the user interface can include further information 1016 regarding the conversions associated with a particular channel. For instance, that total number of conversions and/or the percentage of conversions associated with each channel can be provided. Other information can also be provided in addition or in the alternative. For example, the average position of a user interaction, the average conversion path length, and/or the value associated with the conversions can be provided. The user interface can also include information 1018 regarding all conversions that are illustrated in the graphs.

Hsiao, ¶ 85.

We agree with Appellants' analysis that Hsiao, at least at the portions cited by the Examiner as quoted above, do not teach or suggest the contested limitations. In particular, we find, as argued by Appellants, "[n]one of the depicted graphs are depicted as an endpoint node or a target node . . . [such that Hsiao] does not teach or suggest 'a plurality of nodes connected by links,' as recited in independent claim 1." Reply Br. 12.

For essentially the same reasons argued by Appellants (*id.*), we reverse the Examiner's rejection of independent claim 1, and also the rejection of independent claims 14, and 20, which recite the disputed limitations in commensurate form. For the same reasons, we also reverse

the rejections of all claims 3, 4, 7–9, 11, 13, 15, 16, and 18, rejected under Rejection R2, and which depend from independent claims 1 and 14.

In light of our reversal of the rejections of independent claims 1 and 14, *supra*, we also reverse obviousness Rejection R3 under § 103 of claims 12 and 19, which depend from claims 1 and 14, respectively. On this record, the Examiner has not shown how the additionally cited Graff reference overcomes the aforementioned deficiencies with Frazer and Hsiao, as discussed above regarding claim 1.

CONCLUSIONS

(1) The Examiner did not err with respect to patent-ineligible subject matter Rejection R1 of claims 1, 3, 4, 7–9, 11–16, and 18–20 under 35 U.S.C. § 101, and we sustain the rejection.

(2) The Examiner erred with respect to obviousness Rejections R2 and R3 of claims 1, 3, 4, 7–9, 11–16, and 18–20 under 35 U.S.C. § 103(a) over the cited prior art combinations of record, and we do not sustain the rejections.

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

DECISION

We affirm the Examiner's decision rejecting claims 1, 3, 4, 7–9, 11–16, and 18–20.

AFFIRMED