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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* NORMAND PIGEON and CHE HODGINS<sup>1</sup>

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Appeal 2017-008526  
Application 13/969,678  
Technology Center 2400

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Before JAMES R. HUGHES, NORMAN H. BEAMER, and  
JOHN D. HAMANN, *Administrative Patent Judges*.

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's final decision rejecting claims 1–20, which constitute all the claims pending in this application. Final Act. 1–2.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> According to Appellants, the real party in interest is MySeat.com Media Inc. Br. 3.

<sup>2</sup> We refer to Appellants' Specification ("Spec.") filed Aug. 19, 2013 (that claims benefit of US 61/684,240, filed Aug. 17, 2012) and Appeal Brief ("Br.") filed June 15, 2016. We also refer to the Examiner's Final Office Action (Final Rejection) ("Final Act.") mailed Jan. 15, 2016, and Answer ("Ans.") mailed Oct. 21, 2016.

We affirm.

*Appellants' Invention*

The invention generally relates to “the field of social networking and more particularly to the field of event based social networking” (Spec. ¶ 1). More particularly, the invention relates to methods for scheduling events (in a social networking platform) by providing an event timeline relating to an event that has an event location (venue), an individual joining the event, and forming an event timeline for the individual relating to the event. In the instance where the individual attends the event at a location (venue) other than the original event venue, entering event related timeline data relating to the event at the location (venue) where the individual attended the event. Spec. ¶¶ 7–13; Abstract.

*Representative Claim*

Independent claim 1, reproduced below with key disputed limitations emphasized, further illustrates the invention:

1. A method comprising:
  - providing an event timeline relating to an event having an event venue;*
  - joining the event by an individual and in response thereto forming an event timeline of the individual relating to the event;
  - attending the event at a venue other than the event venue by the individual; and
  - entering event related timeline data relating to the event at the venue other than the event venue.

Br. 11 (Claims Appendix).

*Rejections on Appeal*

1. The Examiner rejects claims 1–20 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter.
2. The Examiner rejects claims 1–20 under Pre-AIA 35 U.S.C. § 102(b) as being anticipated by Barsook et al. (US 2009/0249223 A1, published Oct. 1, 2009) (“Barsook”).

ISSUES

Based upon our review of the record, Appellants’ contentions, and the Examiner’s findings and conclusions, the issues before us are as follows:

1. Did the Examiner err in finding Appellants’ claims were directed to patent ineligible subject matter under 35 U.S.C. § 101?
2. Did the Examiner err in finding that Barsook discloses “providing an event timeline relating to an event having an event venue” within the meaning of Appellants’ claim 1 and the commensurate limitations of claims 16 and 19?

ANALYSIS

*The 35 U.S.C. § 101 Rejection*

Appellants argue independent claims 1, 16, and 19 (as well as dependent claims 2–15, 17, 18, and 20) together as a group with respect to the § 101 rejection. *See* Br. 5–6. We select independent claim 1 as representative of Appellants’ arguments with respect to claims 1–20. 37 C.F.R. § 41.37(c)(1)(iv)(2015).

The Examiner rejects the claims as being directed to patent-ineligible subject matter in that the claims “cite a method for overlaying timelines for event-based social networking. However, [the] claims merely disclose steps

[of] entering event information and joining the event other the entered event but [do] not [provide] anything significant[ly] more other than merely organizing the timeline events.” Final Act. 2. The Examiner expands this explanation, explaining that the claims are directed “to an abstract idea” of “a method for overlaying timelines for event-based social networking,” which is “an idea of itself similar to data collecting, organizing, and storing.” Ans. 2–3. The Examiner further explains that the claims “[do] not provid[e] anything significant[ly] more” (Ans. 2) because the claims “merely [recite] receiving the event, attending the event, collecting the event data, and entering the event data” (Ans. 3). *See* Final Act. 2; Ans. 2–4.

Appellants contend that the claims are not directed to an abstract idea because the claims “recite significantly more than merely the abstract idea of organizing data” (Br. 5) and the claims relate to “specific method[s] of data gathering and time line creation . . . that [are] not supported by a single general-purpose computer” (Br. 5), and “the invention as claimed is not abstract having a real world connection and being incapable of being executed purely within the head of an individual.” (Br. 6). Appellants further contend that “[e]ven if the claims are viewed as containing an abstract idea, . . . then still the specific limitations directed to gathering data from remote locations to an event” “would remove the claimed invention from the scope of being merely an abstract idea and place it squarely into what the courts have defined as being patentable subject matter.”

Accordingly, “the claims are not directed to merely the abstract idea of organizing data, but rather they include ‘something extra’ that embodies an ‘inventive concept’ and therefore they define patent eligible subject matter.” Br. 6.

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, 77–80 (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. Assuming that a claim nominally falls within one of the statutory categories of machine, manufacture, process, or composition of matter, the first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts” (*id.*), e.g., to an abstract idea. For example, abstract ideas 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 an abstract idea, 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 78, 79). This second step is described as “a search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘. . .

significantly more than . . . the [ineligible concept] itself.” *Id.* at 2355 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Court acknowledged in *Mayo*, that “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. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead 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 Analysis*

Turning to the first step of the eligibility analysis, “[t]he first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish*, 822 F.3d at 1335–36. “The abstract idea exception prevents patenting a result where ‘it matters not by what process or machinery the result is accomplished.’” *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113 (1854)). “We therefore look to whether the claims . . . focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO*, 837 F.3d at 1314.

The Examiner finds claim 1 is directed to the abstract idea of “data collecting, organizing, and storing.” Ans. 3. The Examiner also finds that the claims are similar to claims previously found to be directed to abstract

ideas — in that the claims amount to an “abstract idea itself of comparing new and stored information and using rules to identify options (Cyberfone, Smartgene)” (citing *Cyberfone Systems, LLC v. CNN Interactive Group, Inc.*, 558 Fed.Appx. 988, 991–92 (Fed. Cir. 2014) and *SmartGene, Inc. v. Advanced Biological Laboratories, SA*, 555 Fed.Appx. 950, 954–56 (Fed. Cir. 2014)). Ans. 4. Additionally, the Examiner explains that the claims include “no additional limitations that amount to significantly more than generally linking the use of the judicial exception.” Although the claims include features such as a “‘real-time communication path’ and ‘displaying a map,’” “these elements are well-understood, routine and conventional activities previously known in the industry and amount to no more than generally linking the use of the particular judicial exception to a particular technological environment or field of use.” Ans. 4

Conversely, the Appellants simply contend the claims recite a “specific method of data gathering and time line creation” (Br. 5) that cannot be accomplished by “a single general-purpose computer” (Br. 5–6), “cannot be done in a person’s head and [have] real and meaningful benefits in a larger event communication system” (Br. 6), and “include ‘something extra’ that embodies an ‘inventive concept’” (Br. 6). *See* Br. 5–6. We agree with the Examiner that Appellants’ claim 1 (and the other pending claims) are directed to a patent-ineligible abstract idea.

Instead of using a fixed definition of an abstract idea and analyzing how claims fit (or do not fit) within the definition, “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 (Isr.) Ltd. v. Openet Telecom*,

*Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citing *Elec. Power Grp*, 830 F.3d at 1353–54). As part of this inquiry, we must “look at 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 Texas, LLC v. DirecTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Here, Appellants’ claims generally, and independent claim 1, 16, and 19 in particular, relate to collecting information (providing an event timeline, joining the event, and entering event related timeline data), as well as analyzing and manipulating information (providing an event timeline, forming an event timeline of the individual, entering event related timeline data relating to the event at the venue other than the event venue)—that is, analyzing and manipulating data utilizing an un-recited process or algorithm to provide a result (a revised timeline including timeline data relating to the event at the venue other than the event venue). Therefore, the claims broadly recite collecting, analyzing, manipulating, and storing information (data). *See* Abstract; Spec. ¶¶ 7–13. This is consistent with how Appellants describe the claimed invention (*see* Br. 3–5). *See* Spec. ¶¶ 36–40, 42, 44, and 54–60. Contrary to Appellants’ assertions (*see* Br. 5–6), the present claims are directed to an abstract idea, in that the instant claims are analogous to a number of cases in which courts have identified similar claims as encompassing abstract ideas. *See* Ans. 3–4.

Our reviewing court has held that abstract ideas include gathering, analyzing, and displaying information. *See Elec. Power*, 830 F.3d at 1354 (finding “gathering and analyzing information of a specified content, then displaying the results,” to be directed to an abstract idea). Similarly, our reviewing court has held that abstract ideas include gathering, analyzing, and

storing information. *See Content Extraction*, 776 F.3d at 1345, 1347 (finding the “claims generally recite . . . recognizing specific information from the extracted data, and . . . storing that information in a memory” (*id.* at 1345) and that the “claims are drawn to the basic concept of data recognition and storage” (*id.* at 1347)).

Here, the collection, analysis, manipulation, and presentation of information (data) in the form of specific elements within various timelines and the collection and retention (storage) of information (location/venue data in the timelines) is similar to the abstract idea of collecting, analyzing, manipulating, and storing information discussed in *Elec. Power* and *Content Extraction*. Similarly, the Federal Circuit has found claims involving no more than data collection (recording images), data classification (extracting classification information)), and data storage (storing recorded images in a server) to be directed to abstract ideas. *See In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 609–13 (Fed. Cir. 2016). Thus, we agree with the Examiner that the claims are directed to an abstract idea of analyzing and storing information. Notably, this characterization is consistent with Appellants’ description of the claimed invention. *See* Abstract; Spec. ¶¶ 7–13.

#### *Alice Step 2 Analysis*

Having found Appellants’ claims are directed to an abstract concept under *Alice*’s step 1 analysis, we next address whether the claims add significantly more to the alleged abstract idea. As directed by our reviewing Court, we search for an “‘inventive concept’ sufficient to ‘transform the nature of the claim into a patent-eligible application.’” *McRO*, 837 F.3d at 1312 (quoting *Alice*, 134 S. Ct. at 2355). The implementation of the abstract

idea involved must be “more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction*, 776 F.3d at 1347–48 (alteration in original) (quoting *Alice*, 134 S. Ct. at 2359). The “inventive concept” “must be significantly more than the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer.” *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016).

Here, the Examiner found that Appellants’ claims do not add significantly more. *See* Final Act. 3; Ans. 2–4. Appellants, on the other hand, merely contend the claims encompass “‘something extra’ that embodies an ‘inventive concept.’” Br. 6.

Appellants fail to persuade us of error in the Examiner’s rejection with respect to the second *Alice* step. Here Appellants conflate the *Alice* two-part analysis and does not address the Examiner’s findings. We agree with the Examiner that “specific limitations directed to gathering data from remote locations to an event” (Br. 6), separately, or as an ordered combination, do not provide meaningful limitations (i.e., do not add significantly more) to transform the abstract idea into a patent eligible application. *See e.g.*, Ans. 3–4. Indeed, the claim merely recites processes for collecting and presenting information in a timeline and updating a timeline dependent upon certain events or criteria. There is no specific detailed disclosure in the claims or the specification as to the actual mechanisms by which the timelines are presented and/or updated. Rather, the Specification discusses manipulating known existing programs (such as Facebook (*see, e.g.*, Spec. ¶ 32)) or entering information into software and presenting timelines on a device screen. The Specification supports this

view in discussing the processes implemented in software which operates on generic computers to perform the recited data manipulation steps. *See Spec.* ¶¶ 35 (software), 37 (smartphone, GPS, software), 39 and 40 (software), 43 (smartphone, tablet, computer screen), 44 (software), 47 and 51 and 52 (smartphone, tablet, computer screen), 54–57 (software), and 62 (software, interface of an electronic device). Such convention computer processes performed on generic electronic devices (general purpose computers) “do not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning IP*, 839 F.3d at 1096 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014)).

For at least the reasons above, we are not persuaded of Examiner error in the rejection of claim 1 under 35 U.S.C. § 101. Thus, we sustain the Examiner’s rejection under § 101 of independent claims 1, 16, and 19, and also dependent claims 2–15, 17, 18, and 20, which were not argued separately.

#### *The 35 U.S.C. § 102(b) Rejection*

Appellants argue independent claims 1, 16, and 19, and also dependent claims 2–15, 17, 18, and 20 together as a group with respect to the § 102(b) rejection. *See Br.* 6–9. We select independent claim 1 as representative of Appellants’ arguments with respect to claims 1–20. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner rejects independent claim 1 as anticipated by Barsook. *See Final Act.* 3; *Ans.* 4–6. We adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (*Final Act.* 3), and (2) the reasons set forth by the Examiner in the Examiner’s Answer (*Ans.* 4–6) in response to Appellants’ Appeal Brief. We

concur with the findings and conclusions reached by the Examiner, and we address specific findings, conclusions, and arguments for emphasis as follows.

Appellants contend Barsook does not disclose the disputed features of claim 1. *See* Br. 6–9. Specifically, Appellants contend that “Barsook . . . fail[s] to identify or teach a venue” (Br. 7) and ““providing an event timeline relating to an event having an event venue’ [(claim 1)] is not taught in Barsook” (Br. 8). *See* Br. 7–8. Appellants further contend that, to the extent Barsook describes a “venue,” “the cloud implementation of Barsook would specifically have an unknown and potentially varying event venue and would fail to read on Claim 1.” Br. 8.

We agree with the Examiner and find a preponderance of the evidence demonstrates that Barsook discloses the disputed features of Appellants’ claim 1. As explained by the Examiner, the term venue in Appellants’ claims does not require a physical location or space, it merely means the place (location) (real or virtual) where something occurs. *See* Ans. 5. We give claim language its “broadest reasonable interpretation consistent with the [S]pecification” in accordance with our mandate that “claim language should be read in light of the [S]pecification 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) (citations and internal quotation marks omitted). We concur with the Examiner that venue is simply a real or virtual location or place.

As further explained by the Examiner, Barsook describes forming event timelines including events (parties) at a venue (virtual location). *See* Final Act. 3; Ans. 4–6 (citing Barsook ¶¶ 40, 43, 44, 47, 48, 50; Figs. 2, 3,

11–14, 25–30). We agree with the Examiner that Barsook discloses a location or place of an event. *See* Barsook ¶ 47 (Barsook “display[s] the timeline **204** with icons **802** indicating the *location* of the member-generated *events*” (italics added)). Additionally, Appellants failed to file a Reply Brief addressing the Examiner’s clarified findings and additional discussion of the disputed limitations, or otherwise rebutting the findings and responsive arguments made by the Examiner in the Answer.

Thus, Appellants do not persuade us of error in the Examiner’s anticipation rejection of representative independent claim 1. Accordingly, we affirm the Examiner’s rejection of representative claim 1, as well as independent claims 16 and 19 and dependent claims 2–15, 17, 18, and 20, not separately argued with particularity (*supra*).

#### CONCLUSIONS

Appellants have not shown that the Examiner erred in rejecting claims 1–20, under 35 U.S.C. § 101.

Appellants have not shown that the Examiner erred in rejecting claims 1–20, under 35 U.S.C. § 102(b).

#### DECISION

We affirm the Examiner’s rejections of claims 1–20.

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