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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AMIT MADAN, SANDEEP UNNIMADHAVAN,
and JAGACHITTES VADIVELU

Appeal 2017-008695
Application 14/446,819¹
Technology Center 2400

Before MICHAEL J. STRAUSS, BARBARA A. BENOIT, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Technology

According to the Specification, “[t]o ensure a strong WiFi[®] connection, more than one network device is needed to supply the wireless signal. As users move around, or roam, they may need to switch to a different network device.” Spec. ¶ 1. The application relates to “continued deep packet inspection (DPI) after roaming.” *Id.* ¶ 12.

¹ According to Appellants, the real party in interest is Aruba Networks, Inc., “a wholly-owned subsidiary” of Hewlett Packard Enterprise Co. App. Br. 3.

Illustrative Claim

Claim 1 is illustrative and reproduced below with certain limitations at issue emphasized:

1. A non-transitory computer readable medium comprising instructions which, when executed by one or more devices, causes performance of operations comprising:

forwarding, by a first network device, a first set of messages corresponding to a particular connection to a server, the first set of messages being forwarded between a client device and the server via the first network device;

receiving, by the first network device, a copy of a second set of messages corresponding to the particular connection that are transmitted between the client device and the server via a second network device without being transmitted through the first network device; and

analyzing, by the first network device, both the first set of messages and the second set of messages to obtain a classification associated with the particular connection to the server.

Rejections

Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to unpatentable subject matter. Final Act. 3–6.

Claims 1–20 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Nam et al. (US 2009/0116448 A1; May 7, 2009), Pastro (US 2015/0036690 A1; Feb. 5, 2015), and Yadav et al. (US 2012/0216239 A1; Aug. 23, 2012). Final Act. 6–29.

ISSUES

1. Did the Examiner err in concluding claim 1 sought to claim unpatentable subject matter under § 101?

2. Did the Examiner err in finding the combination of Nam and Pastro teaches or suggests “receiving, by the first network device, a copy of a second set of messages corresponding to the particular connection that are transmitted between the client device and the server via a second network device without being transmitted through the first network device,” as recited in claim 1?

ANALYSIS

Patentable Subject Matter (§ 101)

To determine patentable subject matter, the Supreme Court has set forth a two part test. “First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts” of “laws of nature, natural phenomena, and abstract ideas.” *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). In the second step, 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.* (quotations omitted). The Supreme Court has “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.* (quotation omitted).

Here, the Examiner concludes “the claim is drawn to the abstract idea of 1) collecting [a] set of messages [and] 2) using the set of messages for classifying into categories.” Final Act. 4.

Appellants argue “collecting messages and classifying the messages into categories is not an abstract idea” because the Specification provides examples in which “classification can include an indication that ‘the network

device should prevent the client device from sending attachments in a non-approved email client, although emails without attachments are allowed” and “classification can include an indication that ‘the messages are for a social network chat application, the packets relating to chatting may be rejected, thereby preventing the client device from using the chat application, even though the client may still be allowed to visit/use other aspects of the social network.’” App. Br. 7 (quoting Spec. ¶ 34). Based on these same features, Appellants contend “the system changing whether to send and/or receive messages or reject/accept packets transforms the steps into significantly more than generic or abstract steps.” *Id.*

The Federal Circuit, however, has held that “it is improper to confine the claims to the embodiments found in the specification.” *In re Trans Texas Holdings Corp.*, 498 F.3d 1290, 1299 (Fed. Cir. 2007) (quotation omitted). Appellants have not shown how the claims as presently written are limited to the specific examples it identifies. For example, independent claims 1, 9, and 18 are not limited to classifications involving email attachments or social network chat applications. The cited paragraph of the Specification even calls this an “example.” Spec. ¶ 34. Therefore, Appellants’ examples do not render the claims less abstract or provide significantly more. *See* Ans. 3. Moreover, consistent with the Examiner’s conclusion, the Federal Circuit has held that “the realm of abstract ideas includes collecting information, including when limited to particular content” as well as “analyzing information.” *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093 (Fed. Cir. 2016) (quotations omitted).

Appellants further contend “the steps recited in the independent claims are not ‘otherwise conventional steps.’” Reply Br. 2. We agree with

the Examiner, however, that “[t]he generically recited computer elements such as ‘server’, and ‘first and second network device’ do not add a meaningful limitation to the abstract idea because they would be routine in any computer implementation.” Ans. 5; *see also id.* at 4, 6–7. A network device, such as an access point or switch, forwarding messages between a client and a server is merely performing the “well-known functions” of a generic network device. *See* Ans. 7. The Examiner also is correct (Ans. 6) that the Specification explains the claimed hardware components can be generic. *E.g.*, Spec. ¶¶ 16 (“For example, the client device (130) may be a laptop computer, smart phone, personal digital assistant, tablet computer, or other mobile device.”), 15 (“server (105) is a server, rack, computer, laptop, smart phone, tablet computer, or other suitable device that sends and/or receives data to/from client device (130)”), 17, 18 (“the network device may be the access point, . . . a switch (e.g., mobility access switch), or other such device”), 40. Similarly, the Federal Circuit has held that “to utilize an intermediary computer in forwarding information . . . is perfectly conventional.” *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1321 (Fed. Cir. 2016). Likewise, the Federal Circuit has held that “sending information, in whole or in part, gathered from one source to different destinations . . . effects no meaningful transformation because it merely makes the originally-gathered information accessible to different destinations without changing the content or its classification.” *Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App’x 988, 993 (Fed. Cir. 2014); *see also* Final Act. 4 (citing *Cyberfone*).

“Though lengthy and numerous, the claims do not go beyond requiring the collection [and] analysis . . . of available information in a

particular field, stating those functions in general terms, without limiting them to technical means for performing the functions that are arguably an advance over conventional computer and network technology.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1351 (Fed. Cir. 2016).

Accordingly, we sustain the rejection under § 101 of independent claims 1, 9, and 18, and their dependent claims 2–8, 10–17, 19, and 20, which Appellants do not argue separately. *See* App. Br. 6–7; 37 C.F.R. § 41.37(c)(1)(iv).

Obviousness (§ 103)

Claim 1 recites “receiving, by the first network device, a copy of a second set of messages corresponding to the particular connection that are transmitted between the client device and the server via a second network device without being transmitted through the first network device.”

The Examiner finds Nam’s access point A 110 teaches the claimed “first network device”; Nam’s access point B 120 teaches the claimed “second network device”; and Nam’s user terminal 200 teaches the claimed “client device.” *See* Final Act. 6–7. In Nam, access points 100 collectively refer to all three individual access points 100, 110, and 120. *See* Nam ¶ 40, Fig. 1. Nam discloses:

[T]he access point 100 receives *information on the access points 100 accessible by the user terminal 200* from the user terminal 200 S402. In the case of a wireless network system as constructed in FIG. 1, the access points 100 accessible by the user terminal 200 are access point A 110 and access point B 120. Since the user terminal 200 has selected and accessed the access point A 110, *information on the access point B 120* is transmitted to the access point A 110.

Nam ¶ 72 (emphasis added). Citing this, the Examiner finds Nam teaches “state information i.e. [a] copy of messages, is transmitted to access point A.” Ans. 10.

Appellants argue that, in Nam, the information forwarded to the first access point “is never transmitted between the client device and the server.” App. Br. 8. We agree with Appellants. Although Nam teaches receiving “information on the access points 100 accessible by the user terminal 200” (Nam ¶ 72), the Examiner has not shown sufficiently whether such information is ever sent between the client device and the server.

The Examiner further relies on Pastro for disclosing “receiving by second gateway 9 (first network device) a copy of messages i.e. SIP INFO message communication with client to server via first gateway 3 (second network device) without being transmitted through second gateway 9.” Ans. 11 (citing Pastro ¶¶ 47–48, Fig. 6). We agree with Appellants, however, that “the Pastro message (SIP[] INFO) includes connection information related to devices as possible candidates for connection” and “does not include messages associated with a connection between a client device and a server.” App. Br. 9 (emphasis omitted). The Examiner fails to adequately explain how Pastro’s SIP INFO message meets the claim language.

Independent claim 9 recites “receiving, by the first network device, *a second classification information for a second set of messages* corresponding to the particular connection that are transmitted between the client device and the server via a second network device without being transmitted through the first network device.” The Examiner finds “the first access point 110 (first network device) receives a copy of re-association message (copy of second set of messages i.e. *header information (second*

classification information)] where user terminal 200 communicate with server 10, where second message are communicating via AP 120.” Final Act. 15 (some emphasis omitted). Similar to claim 1, however, the Examiner has not shown sufficiently that Nam’s “header information” is for “a second set of messages corresponding to the particular connection that are transmitted between the client device and the server,” as required by claim 9.

In independent claim 18, a first network device forwards a first set of messages to a server, a second network device forwards a second set of messages to the server, and a third network device receives “a copy of the first set of messages from the first network device and a copy of the second set of messages from the second network device.” But as discussed above for claim 1, the Examiner has not shown sufficiently that the copy of the messages is “corresponding to the particular connection to the server” or “forwarded between the client device and the server.” *See* Final Act. 24–27.

Accordingly, we do not sustain the rejection under § 103 of independent claims 1, 9, and 18, and their dependent claims 2–8, 10–17, 19, and 20.

DECISION

For the reasons above, we affirm the decision rejecting claims 1–20 under § 101, but we reverse the decision rejecting claims 1–20 under § 103.

Because we affirm at least one rejection for every appealed claim, we designate this Decision an affirmance.

No time for taking subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED