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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALLEN BLUE, JOFF REDFERN,
PAUL TAYLOR OGILVIE, and JOSEPH PAUL BETZ

Appeal 2017-009022
Application 13/303,812¹
Technology Center 2100

Before JEAN R. HOMERE, IRVIN E. BRANCH, and
AARON W. MOORE, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–6, 8–16, and 18–20, which are all of the claims pending in the application.

We AFFIRM.

Technology

The application relates to presenting a ranked listing of articles, by popularity, in response to a query. Spec. Abstract.

¹ According to Appellants, the real party in interest is LinkedIn Corporation. App. Br. 2.

Illustrative Claim

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

1. A method comprising:

responsive to a query of a database, receiving a selection of articles and respective selection action data at a networking site, the articles being selected by users of the site and submitted to a networking update stream;

according to a number of the users belonging to a category that initiate each respective selection action, scoring each article to produce a corresponding popularity score;

arranging the selection of articles according to the respective popularity scores to produce a ranked listing of the articles; and

responsive to receiving an indication of a user accessing the networking site, transmitting the ranked listing of the articles to a client device of a viewing user, the viewing user having chosen to follow the category.

Rejections²

Claims 1–6, 8–16, and 18–20 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Gerace (US 2007/0118802 A1, published May 24, 2007) and Hull (US 2011/0289011 A1, published Nov. 24, 2011). Final Act. 8–25.

Claims 1–6, 8–16, and 18–20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. Ans. 3–39.

² The Examiner withdrew additional obviousness rejections of the pending claims. Ans. 2.

ANALYSIS

Obviousness Rejection of Claims 1–6, 8–16, and 18–20

Claim 1 recites “according to a number of the users belonging to a category that initiate each respective selection action, scoring each article to produce a corresponding popularity score.” Appellants argue the combination of Gerace and Hull does not disclose this limitation.

We are not persuaded of error, for the reasons stated by the Examiner. Final Act. 7–9; Ans. 25–26. In particular, we find that the argued limitation reads on Gerace’s disclosure of a system that “rank[s] authored works and authors by popularity within categories,” that “measures popularity of an authored work by how many times the authored work is read, bookmarked, recommended, forwarded, commented on and/or subscribed to,” and that uses “[s]ome weighted combination of any of these factors . . . to determine popularity.” Gerace ¶ 16.

Accordingly, we sustain the rejection of claim 1 as obvious over the combination of Gerace and Hull and also of claims 2–6, 8–16, and 18–20, argued on the same basis. App. Br. 10.

35 U.S.C. § 101 Rejection of Claims 1–6, 8–16, and 18–20

Section 101 defines patentable subject matter: “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.” 35 U.S.C. § 101. The Supreme Court, however, has “long held that this provision contains an important implicit exception” that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Mayo*

Collaborative Servs. v. Prometheus Labs., Inc., 566 U.S. 66, 70 (2012) (quotation omitted). To determine patentable subject matter, the Supreme Court has set forth a two part test.

Step 1 – Whether the Claims Are Directed to an Abstract Idea

“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). “The inquiry often is whether the claims are directed to ‘a specific means or method’ for improving technology or whether they are simply directed to an abstract end-result.” *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017).

A court must be cognizant 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), and “describing the claims at . . . a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Instead, “the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

The Examiner concludes that claim 1

describes receiving data (responsive to a query of a database, receiving a selection of articles and respective selection action data at a networking site), scoring data (according to a number of the users belonging to a category that initiate each respective selection action, scoring each article to produce a corresponding popularity score), arranging of data (arranging the selection of articles according to the respective popularity scores to produce

a ranked listing of the articles), transmitting data (responsive to receiving an indication of a user accessing the networking site, transmitting the ranked listing of the articles to a client device of a viewing user) which correspond to [an abstract idea].

Ans. 3–4.

We have considered Appellants’ arguments (Reply Br. 3–5) but are not persuaded the Examiner erred in concluding the claims are directed to an abstract idea. “In addressing the first step of the section 101 inquiry, as applied to a computer-implemented invention, it is often helpful to ask whether the claims are directed to ‘an improvement in the functioning of a computer,’ or merely ‘adding conventional computer components to well-known business practices.’” *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1270 (Fed. Cir. 2016) (quoting *Enfish*, 822 F.3d at 1338). Here, we agree with the Examiner that the claims “do[] not recite an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment.” Ans. 4. Looking at the claims as an ordered combination to present to a user a ranked listing of articles according to a category, the claims receive, score data, arrange data, and transmit data. *See* claim 1; Ans. 3. Yet the Federal Circuit has “previously held other patent claims ineligible for reciting similar abstract concepts that merely collect, classify, or otherwise filter data.” *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327 (Fed. Cir. 2017); *see also* *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (“filtering content is an abstract idea because it is a longstanding, well-known method of organizing human behavior, similar to concepts previously found to be

abstract”). For example, in one recent case, the Federal Circuit affirmed the ineligibility of claims involving “acquiring identification data . . . , using the data to verify the validity . . . , and denying access . . . if . . . invalid.” *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1371 (Fed. Cir. 2017). In *Smart Systems*, the Federal Circuit held:

The Asserted Claims are not directed to a new type of bankcard, turnstile, or database, nor do the claims provide a method for processing data that improves existing technological processes. Rather, the claims are directed to the collection, storage, and recognition of data. We have determined that claims directed to the collection, storage, and recognition of data are directed to an abstract idea.

Smart Sys., 873 F.3d at 1372. The claims here are analogous in that they are directed to the collection, scoring, arranging, and transmitting of data, rather than an improvement in technology.

In their briefs, Appellants recite the claim language but have not sufficiently explained what specifically about the limitations renders the claims “an improvement in computers as tools.” *See* Reply Br. 4 (referring to *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1351 (Fed. Cir. 2016)). “Though lengthy and numerous, the claims do not go beyond requiring the collection, analysis, and display 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.” *Id.* “[M]erely 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.” *Id.* at 1355; *see also*

FairWarning IP, LLC v. Iatric Sys., Inc., 839 F.3d 1089, 1097–98 (Fed. Cir. 2016).

We therefore agree with the Examiner that the claims are directed to an abstract idea.

Step 2 – Whether the Claims Amount to Significantly More

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.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). 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).

For computer-related technology, the Federal Circuit has held that a claim may pass the second step if “the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer [technology].” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (e.g., “a challenge particular to the Internet”). Appellants argue the claimed invention “recites ‘significantly more’ because it provides a solution to a problem that arises from the field of computerized searching.” Reply Br. 4–5. Yet we agree with the Examiner that the claims instead recite “receiving data, scoring data, arranging data and transmitting data . . . based on rules executed by generic computing devices.” Ans. 4–5. “When claims like the Asserted Claims are directed to an abstract idea and merely require generic computer

implementation, they do not move into section 101 eligibility territory.”
Smart Sys., 873 F.3d at 1374) (quotations omitted).

Appellants argue the limitations of claims 3 and 13 “further improve[] upon the traditional computerized search because [they include] the selection actions performed by other users rather than just the article text from the article. By including the selection action data, a computerized search of the articles yields those articles that have been previously selected by other users, unlike a traditional computerized search which focuses on whether provided keywords appear in the searched articles.” Reply Br. 5. Yet we agree with the Examiner that “[t]he use of generic computer components to index data by using categories corresponding metadata does not impose any meaningful limit on the computer implementation of the abstract idea.” Ans. 11.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claims 1–6, 8–16, and 18–20.

DECISION

For the reasons above, we affirm the Examiner’s decision rejecting claims 1–6, 8–16, and 18–20.

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

AFFIRMED