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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARIANNE IANNACE, DANIEL POSWOLSKY,
RAFFAELLA C. STUART, and ANDREA GILMAN¹

Appeal 2017-009251
Application 12/727,333
Technology Center 3600

Before JAMES R. HUGHES, JENNIFER S. BISK, and
JOYCE CRAIG, *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 decision rejecting claims 1–4, 7, 8, 11–14, 20, and 22–25. Claims 5, 6, 9, 10, 15–19, and 21 have been canceled. Final Act. 1–2; Appeal Br. 2.² We have jurisdiction under 35 U.S.C. § 6(b).

¹ The real party in interest, according to Appellants, is Mastercard International, Inc. *See* Appeal Br. 2.

² We refer to Appellants’ Specification (“Spec.”) filed Mar. 19, 2010; Appeal Brief (“Appeal Br.”) filed Jan. 3, 2017; and Reply Brief (“Reply Br.”) filed June 16, 2017. We also refer to the Examiner’s Final Office Action (Final Rejection) (“Final Act.”) mailed Sept. 9, 2016, and Answer (“Ans.”) mailed May 8, 2017.

We affirm.

Appellants' Invention

The invention relates generally to “offers that may be provided to customers via mobile devices” and, in particular, to “systems and methods to provide offers to mobile devices in accordance with proximity-sensitivity scores” (Spec. 1:3–5). *See* Spec. 2:12–3:9; Abstract.

Representative Claim

Independent claim 1, reproduced below, further illustrates the invention:

1. A method for providing merchant offers to customer mobile devices, comprising:

determining, by an offer engine on a periodic basis for each of a plurality of merchants, a proximity-sensitivity score that indicates a likelihood that potential offers from the merchants would be accepted by customers, the proximity-sensitivity score based on distances between customer locations and merchant locations and on a merchant category type;

receiving, by the offer engine from a mobile device of a customer, an indication of a customer's current location;

receiving, by the offer engine, customer transaction data in substantially real time;

adjusting, by the offer engine, the proximity-sensitivity scores of the merchants based on the customer transaction data;

automatically selecting for the customer, in substantially real time by the offer engine, at least two selected offers from a plurality of potential offers based on the adjusted proximity-sensitivity scores and the customer's current location;

determining, by the offer engine, ranking values indicating an order in which the at least two selected offers are to be displayed; and

transmitting, by the offer engine, data associated with the at least two selected offers and the ranking values, via a wireless communication network, to the mobile device associated with the customer such that the selected offers with the highest likelihood of acceptance are displayed on a display screen of the mobile device above those with lower likelihoods of acceptance.

Rejection on Appeal

The Examiner rejects claims 1–4, 7, 8, 11–14, 20, and 22–25 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

ISSUE

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

Did the Examiner err in finding Appellants’ claims were directed to patent-ineligible subject matter under 35 U.S.C. § 101?

ANALYSIS

The Examiner rejects claims 1–4, 7, 8, 11–14, 20, and 22–25 as a group based on claim 1 (*see* Final Act. 2–5) and concludes claim 1 is directed to patent-ineligible subject matter in that claim 1 is “directed to the abstract idea of providing targeted ads to users based on their purchasing habits and physical location” (Final Act. 2), which “correspond to concepts identified as abstract ideas by the courts, such as comparing new and stored information and using rules to identify options” (Final Act. 3), similar to claims held to be abstract ideas in *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014), *Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App’x 988 (Fed. Cir. 2014), and *SmartGene, Inc. v. Advanced Biological Laboratories, SA*, 555 F. App’x 950, 955 (Fed.

Cir. 2014). *See* Final Act. 2–3; Ans. 2–7. The Examiner further determines that “claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements when considered both individually and as an ordered combination do not amount to significantly more than the abstract idea,” in that claim 1 recites

the additional limitations of an “offer engine” comprising a “non-transitory storage device” for storing computer-readable instructions, and an “offer engine processor” programmed to execute the instructions stored on the memory, and a “communication device” for transmitting data associated with the offers and ranking values to a user. These components are recited at a high level of generality and are recited as performing generic computer functions routinely used in computer applications.

Final Act. 4; *see* Final Act. 4–5; Ans. 7–13.

Appellants contend the Examiner erred in rejecting the claims as being directed to patent ineligible subject matter. *See* Appeal Br. 9–20; Reply Br. 2–5. Specifically, Appellants contend that “the claims are directed to significantly more than” the Examiner’s alleged abstract idea (Appeal Br. 14). Appellants also contend claim 1 (and the other independent claims) “improves the functionality of an offer engine and solves the technological problems of how to wirelessly provide appropriate merchant offers” and the claims are “directed to a specific implementation of a technological solution to a particular technological problem” and, accordingly, “the claims are not directed to an abstract idea.” Appeal Br. 15; *see* Appeal Br. 14–15; Reply Br. 3. Appellants also contend “the Examiner has not met the . . . burden of establishing that the claims are directed to an abstract idea” because “only a generalized allegation was made that the

concepts described” in the claims “are not meaningfully different than those found by the courts.” Appeal Br. 15–16. Additionally, Appellants contend “the claims do not preempt the field of ‘providing targeted ads to users based on their location and purchasing habits.’” Appeal Br. 17; *see* Appeal Br. 16–18. Further, Appellants contend “the claims recite significantly more than an abstract idea and are thus patent-eligible” Appeal Br. 18; *see* Appeal Br. 18–20; Reply Br. 3–5.

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, “the 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 Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113 (1853)).

The Examiner determines independent claim 1 is directed to the abstract idea of “providing targeted ads to users based on their purchasing habits and physical location” (Final Act. 2), which is analogous to “comparing new and stored information and using rules to identify options” (Final Act. 3) similar to *Digitech*, *Cyberfone*, and *SmartGene*. The Examiner further explains how claim 1 is similar to *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266 (Fed. Cir. 2016) and *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). *See* Ans. 2–5. Contrary to Appellants’ contentions (*supra*), the Examiner enumerates the limitations of claim 1 (*see* Final Act. 2–3) and explains how the enumerated steps are similar to the cited cases. *See* Final Act. 2–3; Ans. 2–5. Conversely, Appellants attack the Examiner’s determinations as lacking sufficient analysis and explanation, but do not distinguish claim 1 from the cited cases. *See* Appeal Br. 14–16; Reply Br. 2–3. We agree with the Examiner that Appellants’ claim 1 (and the other pending claims) are directed to patent-ineligible abstract ideas or concepts.

Here, in rejecting the claims (in particular claim 1) under 35 U.S.C. § 101, the Examiner analyzed the claims using the *Mayo/Alice* two-step framework, consistent with the guidance set forth in the USPTO’s “2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (Dec. 16, 2014), in effect at the time the rejection was made, i.e., on Sept. 9, 2016. The Examiner notified Appellants of the reasons for the rejection “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. *See* Final Act. 2–5. Contrary to Appellants’ assertions, in doing so, the Examiner set forth a *prima facie* case of unpatentability such

that the burden of production shifted to Appellants to demonstrate that the claims are patent-eligible.

Claim 1 recites a method for providing merchant offers to customer mobile devices. The method (process) determines a proximity-sensitivity score, which indicates the likelihood of acceptance (of the merchant offer) by customers based on distances between customer locations and merchant locations and on a merchant category type. The method utilizes an offer engine to determine the proximity-sensitivity score on a periodic basis for multiple merchants. The method receives customer transaction data in substantially real time. The method then adjusts (revises) the proximity-sensitivity scores of the merchants based on the received customer transaction data. The method also receives a customer's current location from the customer's mobile device and automatically selects offers from a multiple potential offers based on the adjusted proximity-sensitivity scores and the customer's current location. The adjusting and selecting are performed by the offer engine. Additionally, the offer engine ranks the selected offers (in an order to be displayed) and transmits the ranked selected offers to the customer's mobile device such that the selected offers with the highest likelihood of acceptance are displayed on a display screen of the mobile device above those with lower likelihoods of acceptance. In sum, as the Examiner finds, claim 1 is directed to "providing targeted ads," i.e., offers, "to users based on their purchasing habits and physical location" (Final Act. 2), and amounts to receiving, analyzing, and manipulating information (receiving information), determining a probability score, selecting offers (information), ranking offers, and communicating

(transmitting) information (the ranked offers) to a user's mobile device for display thereon.

Utilizing the above-identified characterization, we analyze whether claim 1 is directed to an 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., LLC v. Alstom S.A.*, 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 in particular, relate to providing targeted offers to users based on their purchasing habits and physical location. That is, receiving user transaction information and location information, determining a probability score, selecting offers, ranking offers, and communicating (transmitting) the ranked offers to a user’s mobile device for display thereon. This is consistent with how Appellants describe the claimed invention. *See* Appeal Br. 2–5 (citing Spec. 2:13–20, 23–25; 4:10–11; 5:8–6:1; 6:11–29; 7:1–18, 8:1–6; 9:20–28; 10:1–2; 11:12–16; 12:26–13:3; 13:7–13; 18:18–22; 19:1–3, 14–19; 20:19–21; 21:8–14; Figs. 2–5, 7, 9, 13).

The present claims are analogous to a number of cases in which courts have identified similar claims as encompassing abstract ideas. Our

reviewing court has held that abstract ideas include receiving/gathering, organizing, analyzing, and manipulating information. *See Elec. Power Grp.*, 830 F.3d at 1354 (finding claims directed to a “combination of . . . abstract-idea processes . . . of gathering and analyzing information” to be abstract). Similarly, our reviewing court has held that abstract ideas include gathering, organizing, analyzing, and storing information. *See Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC.*, 874 F.3d 1329, 1337–38 (Fed. Cir. 2017) (finding claims directed to the functional results of accumulating, converting, and monitoring records manipulate data “but fail[] to do so in a non-abstract way”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1345, 1347 (Fed. Cir. 2014) (finding the “claims generally recite . . . extracting data . . . [and] recognizing specific information from the extracted data” and that the “claims are drawn to the basic concept of data recognition”).

Here, the collection, analysis, manipulation, and communication of information (data)—in the form of receiving user transaction information and location information; organizing and analyzing the information (determining a probability score); manipulating information to select and rank offers; and communicating information (the ranked offers)—are analogous to the abstract ideas of collecting, analyzing, and manipulating information discussed in *Electric Power Group*, *Two-Way Media*, and *Content Extraction*.

Appellants’ claims can also be distinguished from patent-eligible claims such as those in *McRO*, *Bascom* (*Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)), and *Enfish*, that are directed to “a specific means or method that improves the relevant

technology” (*McRO*, 837 F.3d at 1314) or a “specific technical solution” (*Bascom*, 827 F.3d at 1351–52) or “a specific improvement to the way computers operate” (*Enfish*, 822 F.3d at 1336). Contrary to Appellants’ arguments, claim 1 is not “a technological solution” that “improves the functionality of an offer engine and solves the technological problems of how to wirelessly provide appropriate merchant offers” (Appeal Br. 15). Appellants’ claim 1 (as well as the other pending claims) is distinguishable from patent-eligible claims such as those in *Enfish* that are directed to “a specific improvement to the way computers operate.” *Enfish*, 822 F.3d at 1336. Appellants’ claims are directed to the results of data analysis and manipulation (receiving user information and determining a probability score (by unidentified means), selecting offers and ranking offers (again by unidentified means), and communicating the ranked offers), rather than “a particular way of performing” or “inventive technology for performing those functions” or, in other words, “achiev[ing] these results in a non-abstract way.” *Two-Way Media*, 874 F.3d at 1337–38 (internal quotations omitted).

Appellants also argue the “claims do not preempt” or seek to tie up “the field of ‘providing targeted ads to users based on their location and purchasing habits.’” Appeal Br. 17; *see* Appeal Br. 16–18. However, while preemption is the concern that drives the exclusionary principle of judicial exceptions to patent-eligible subject matter, *Alice*, 134 S.Ct. at 2354, preemption is not a separate test of patent-eligibility, but is inherently addressed within the *Alice* framework. *See Ariosa Diagnostics, Inc., v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”); *OIP Techs., Inc. v.*

Amazon.com, Inc., 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“that the claims do not preempt all price optimization . . . do not make them any less abstract”))).

In summary, “the focus of the claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *Elec. Power Grp.*, 830 F.3d at 1354. Thus, we agree with the Examiner that the claims are directed to the abstract ideas of collecting, analyzing, and manipulating information utilizing a computer.

Alice Step 2 Analysis

Having concluded Appellants’ claims are directed to an abstract idea 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*, 827 F.3d at 1349 (citation omitted).

Here, the Examiner determined that Appellants’ claims do not add significantly more—the “claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements when considered both individually and as an

ordered combination do not amount to significantly more than the abstract idea” because claim 1 simply recites:

additional limitations of an “offer engine” comprising a “non-transitory storage device” for storing computer-readable instructions, and an “offer engine processor” programmed to execute the instructions stored on the memory, and a “communication device” for transmitting data associated with the offers and ranking values to a user. These components are recited at a high level of generality and are recited as performing generic computer functions routinely used in computer applications.

Final Act. 4; *see* Final Act. 4–5; Ans. 7–13. Appellants, on the other hand, reiterate the steps of claim 1 and contend “numerous limitations contained within the elements of” claim 1 (and the other independent claims) “are directed to a specific method that features an offer engine” (Appeal Br. 18) and “the offer engine generates and then adjusts proximity-sensitivity scores of a merchant location with regard to a customer location, automatically selects at least two merchant offers, determines ranking values, and then wirelessly transmits the selected offers to the customer’s mobile device for display in a ranked order” (Appeal Br. 19), which “improves the functionality of [the] offer engine” and “solves the technological problem[] of . . . wirelessly provid[ing] . . . merchant offers” (*id.*). *See* Appeal Br. 18–20; Reply Br. 3–5.

Appellants fail to persuade us of error in the Examiner’s rejection with respect to the second *Alice* step. We agree with the Examiner that Appellants’ claim 1 (and the other pending claims) does not evince an “inventive concept” that is significantly more than the abstract idea itself. Here, Appellants simply reiterate the limitations of claim 1 and conclude that the limitations amount to “significantly more than” the alleged abstract

idea and instead are directed to specific methods “that feature[] an offer engine” Appeal Br. 19. Appellants do not explain how the limitations (individually and in combination) are not routine or are unconventional.

We agree with the Examiner that the additional limitations, 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* Final Act. 4–5; Ans. 7–13. Claim 1 (and the other pending claims) merely recites functions (processes) for receiving, analyzing, and manipulating data using known conventional computers and/or equipment to provide conventional advertisements (merchant discount offers). The processes of receiving and communicating information and analyzing information (data) in a conventional computer remain the same regardless of the information content. Appellants’ Specification belies their contentions that the systems and/or processes are unconventional. For example, Appellants’ Specification explains:

A “mobile device” might refer to a wireless telephone, a PDA, a mapping apparatus, or any similar communication device. . . . An “offer” might comprise, for example, text, redemption codes, images, sound, and/or video associated with a discount or any other benefit that might be provided to customers. The offer server . . . might transmit offers to the mobile device . . . via a wireless communication network, such as a third or fourth generation (3G or 4G) communication network.

Spec. 4:18–27. Further, Appellants’ Specification explains that “[t]hose skilled in the art will recognize that the various factors associated with the selection of offers could be combined and/or calculated in any number of different ways.” Spec. 8:13–14. Additionally, Appellants’ Specification explains that the offer engine “comprises a processor,” which is coupled to,

e.g., “a storage device” that “stores a program . . . for controlling the processor” and the processor “performs instructions” for “determin[ing] a proximity-sensitivity score” and “the storage device . . . also stores a proximity-sensitivity score database . . . , a ranked offer database . . . , and a merchant propensity database” “that may be used in connection with the engine.” Spec. 10:1–11:15.

Such conventional computer processes operating on conventional computer hardware “do not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning*, 839 F.3d at 1096 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014)).

To the extent Appellants contend that claim 1 (and the other pending claims) provide improvements to a technical field (such as data processing and analysis or providing merchant offers utilizing an offer engine), similar to the claims discussed in *DDR Holdings*, we find *DDR Holdings* inapposite to the instant claims. In *DDR Holdings*, the court held that a claim may amount to more than an abstract idea recited in the claims when it addresses and solves problems *only* encountered with computer technology and online transactions, e.g., by providing (serving) a composite web page rather than adhering to the routine, conventional functioning of Internet hyperlink protocol. *See DDR Holdings*, 773 F.3d at 1257–59. In contrast, claim 1 performs a process of receiving, analyzing and manipulating information, utilizing conventional computer networks and systems (*supra*). As we previously explained, the instant claims are more akin to the claims for analyzing and manipulating information found to be abstract in *Electric Power Group*, 830 F.3d at 1353.

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 claim 1, independent claims 20 and 25, and dependent claims 2–4, 7, 8, 11–14, and 22–24, which were not argued separately.

CONCLUSION

Appellants have not shown that the Examiner erred in rejecting claims 1–4, 7, 8, 11–14, 20, and 22–25 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's rejection of claims 1–4, 7, 8, 11–14, 20, and 22–25.

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