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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY LEE LITTLEJOHN, MARK R. ALLEN,
DAVID C. JELLISON JR., CURT LUTRINGER, and
JOSEPH BREWER

Appeal 2017-010064
Application 14/341,234
Technology Center 2600

Before JOHN A. JEFFERY, BRUCE R. WINSOR, and
JUSTIN BUSCH, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellants¹ appeal from the Examiner's decision to reject claims 1–22. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the real party in interest as iHeartMedia Management Services, Inc. App. Br. 4. Clear Channel Management Services is the Applicant for the instant patent application. *See* Bib. Data Sheet.

CLAIMED SUBJECT MATTER

Appellants' invention relates to an integrated media automation system that ensures an advertisement is not aired during a particular show.

Spec. ¶ 27. Claim 1 is representative and reproduced below:

1. A method for scheduling advertisements in spot breaks of a broadcast schedule, the method comprising:
 - identifying a show included in the broadcast schedule as a restricted show;
 - obtaining a list of advertisers that prohibit advertiser content associated with advertisers in the list of advertisers from being scheduled during the restricted show;
 - setting restriction rules configured to prevent the advertiser content associated with advertisers in the list of advertisers from being scheduled during the restricted show;
 - generating a broadcast log, based on the broadcast schedule, to be used by a plurality of stations, wherein generating the broadcast log includes scheduling advertisements in the spot breaks of the broadcast schedule subject to the restriction rules; and
 - in response to scheduling a particular advertisement in a spot break associated with the restricted show, inserting a flag into metadata associated with the broadcast log, the flag configured to prevent subsequent automated replacement of the particular advertisement.

REJECTIONS²

Claims 1–22 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Act. 2–3.

Claim 1–22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bayer (US 8,255,949 B1; Aug. 28, 2012), Iijima

² The rejections are under the provisions of 35 U.S.C. in effect on or after the effective date of the Leahy-Smith America Invents Act of 2011 (AIA). *See, e.g.*, Final Act 2.

(US 2004/0093253 A1; May 13, 2004), and Saslow (US 2007/0039018 A1; Feb. 15, 2007). Final Act. 4–22.

ANALYSIS

THE § 101 REJECTION

To be eligible under 35 U.S.C. § 101, the subject matter of an invention must be a “new and useful process, machine, manufacture, or composition of matter, or [a] new and useful improvement thereof.” 35 U.S.C. § 101. We initially note that claims 1–18 are directed to a “method,” i.e., a process; and claims 19–22 are directed to a “system” including “a processor and associated memory,” i.e., a machine. Thus, each of the claims is directed to one of the four statutory categories of patentable subject matter.

The Supreme Court has held there are implicit exceptions to the categories of patentable subject matter identified in § 101, including laws of nature, natural phenomena, and abstract ideas. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). Further, in *Alice* the Court has “set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.* (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)). The evaluation follows the two-part analysis set forth in *Mayo*: 1) determine whether the claim is directed to an abstract idea; and 2) if the claim is directed to an abstract idea, determine whether any element, or combination of elements, in the claim is

sufficient to ensure that the claim amounts to significantly more than the abstract idea itself. *See Alice*, 134 S. Ct. at 2355.

Step One of the Alice Framework

According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355. Appellants argue that the claims are not directed to the broad concept of “advertising,” but are instead “directed to a particular technique for controlling how advertisements are inserted into broadcast logs.” App. Br. 13; Reply Br. 3.

At the outset, we note the Examiner finds that claim 1 is directed to “scheduling advertisements,” not “advertising.” Final Act. 2; Ans. 2. Nevertheless, Appellants challenge the Examiner’s conclusion regarding the “directed to” inquiry. The “directed to” inquiry of the *Alice* step one determination asks whether, “considered in light of the [patent’s] specification,” the “character” of the claims at issue is directed “as a whole ... to [patent-ineligible] subject matter.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016); *see also Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Appellants argue the claims as a group. *See* App. Br. 12–15; Reply Br. 3–6. We, therefore, select independent claim 1 as the representative claim for this group, and claims 2–22 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv) (2016). Claim 1 recites “[a] method for scheduling advertisements in spot breaks of a broadcast schedule, the method comprising” five primary steps—(1) identify a restricted show in the broadcast schedule; (2) obtain advertisers who prohibit advertiser content

during the restricted show; (3) set restriction rules to prohibit the advertiser content during the restricted show; (4) generate a broadcast log by scheduling advertisements in the spot breaks; and (5) insert a flag into metadata associated with the broadcast log in response to scheduling a particular advertisement in a spot break to prevent a subsequent replacement. In this case, we agree with the Examiner that claim 1, as a whole, is directed to scheduling advertisements.

“The ‘abstract idea’ step of the inquiry calls upon us to 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. Direct TV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)). In that regard, the Background section of the Specification discusses the problem, which is that “[w]hen networked broadcast stations share programming, content broadcast transmitted from one broadcast station may not be appropriate for another broadcast station. For example, a broadcast program may include songs, movies and/or advertisements pertinent to a particular audience and not to another audience.” Spec. ¶ 6. According to the Specification, the inventors solved the problem via “an integrated media automation system . . . to ensure that advertiser[s] who do not want to be associated with a controversial show will not have their advertisements aired during that show.” *Id.* ¶ 27. In light of the Specification’s description of the problem and solution, the advance over the prior art by the claimed invention is improving the scheduling of advertisements by ensuring specific advertisements will not be scheduled

during specific shows. Given the focus of claim 1, as a whole, is on scheduling advertisements and, in light of the Specification, the focus of the invention is improving the scheduling of advertisements, the claims are properly characterized as being “directed to” scheduling advertisements, as the Examiner found.

Scheduling advertisements is a longstanding business practice that is well-understood, routine, and conventional. For example, advertisements, whether displayed on a roadway billboard, magazine, or television, are allotted specific time frames. “[F]undamental economic and conventional business practices are often found to be abstract ideas, even if performed on a computer.” *Enfish*, 822 F.3d at 1335 (citing *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015)).

Thus, for the above reasons, we are unpersuaded the Examiner erred in concluding the claims are directed to an abstract idea.

Step Two of Alice Framework

Step two involves the search for an “inventive concept.” *Alice*, 134 S. Ct. at 2355; *Elec. Power*, 830 F.3d at 1353. For an inventive concept, “more is required than ‘well-understood, routine, conventional activity already engaged in’” by the relevant community. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016) (quoting *Mayo*, 566 U.S. at 79–80); see also *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347–48 (citing *Alice*, 134 S. Ct. at 2359).

Appellants admit embedding metadata and inserting flags are well-known techniques implemented on a generic computer. App. Br. 14.

Appellants compare the claims' combination of elements to those of *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), and argue the combination of elements recites “a particular technique for restricting or verifying the ability of automated broadcast systems to change specific portions of previously created broadcast logs . . . [that is] a new and useful application of the abstract idea of scheduling.” App. Br. 14.

According to Appellants, “[t]he use of automated systems to generate broadcast logs that have restrictions preventing other automated systems from modifying those logs is believed to fall squarely within the same principles used by the court[s] to find the claims patent eligible in *DDR Holdings*.” App. Br. 14–15; *see also* Reply Br. 5–6. We disagree.

In *DDR Holdings*, the claims specified “how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *DDR Holdings*, 773 F.3d at 1258. The court determined that:

these claims stand apart because they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.

Id. at 1257.

Here, Appellants have not identified a purported “problem specifically arising in the realm of computer networks” solved by the invention. Nor have Appellants pointed to any claim limitation that “overrides the routine and conventional sequence of events.” In contrast to the claims in *DDR*

Holdings, the problem solved by the invention here is focused on solving “the performance of some business practice known from the pre-Internet world along with the requirement to perform it on” a computer.

Appellants’ further contend that, because no evidence of record indicates humans performed certain steps of claims 1, 11, and 19, the claims recite more than merely the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. App. Br. 15 (quoting *DDR Holdings*, 773 F.3d at 1257³); *see also* Reply Br. 5 (arguing that using metadata to prevent automated replacement of particular advertisements included in a broadcast log is not conventional). We disagree.

The steps Appellants identify in claims 1, 11, and 19, *see* App. Br. 15; Reply Br. 5, merely add routine additional steps to the otherwise abstract idea of scheduling advertisements discussed above. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014). Appellants’ claims add generic computer functionality to replace routine manual activity in the longstanding business practice of scheduling advertisements to ensure specific advertisements are shown during a specific allotted time frames and preventing subsequent replacement of a specific advertisement. Using automated computer processes, such as inserting a flag into metadata associated with a broadcast log to prevent the subsequent replacement, cannot transform a longstanding business practice into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2358.

³ Appellants quote a portion of *DDR Holdings* and erroneously cite “*Alice*, 134 S. Ct. at 2358.”

Thus, we see nothing in the claimed subject matter that transforms the abstract idea of scheduling advertisements, and the accompanying additional routine steps performed on a generic computer thereof, into an inventive concept. For the above reasons, Appellants have not persuaded us of error in the rejection of the claims under 35 U.S.C. § 101.

THE § 103 REJECTION
Claims 1–10 and 19–22

The Examiner finds Bayer, Iijima, and Saslow collectively would have taught or suggested all recited elements of claim 1. Final Act. 4–7. Among other things, the Examiner finds Bayer generates a broadcast log that includes advertisements scheduled in spot breaks of a broadcast schedule. *Id.* at 5. The Examiner cites Iijima as teaching obtaining a list of advertisers that prohibit advertiser content from being scheduled during a restricted show. *Id.* at 5–6. The Examiner acknowledges that the combination of Bayer and Iijima does not insert a flag into metadata associated with the broadcast log in response to scheduling a particular advertisement in a spot break associated with the restricted show, but the Examiner cites paragraph 531 of Saslow for teaching “flagging and marking spots during advertisement-program matching algorithms.” Final Act. 7; Ans. 6. The Examiner further cites paragraph 482 of Saslow for teaching embedding identifying watermarks into commercials and reporting metadata logs collected at the time of embedding. Final Act. 7; Ans. 6–7.

Appellants contend, among other things, that Saslow’s flagging of inconsistency errors does not teach or suggest a flag that prevents subsequent automated replacement of a particular advertisement. App.

Br. 20–21. Appellants argue that marking inconsistent data is not similar to flagging a spot to prevent automated replacement of an advertisement already scheduled in a broadcast log. *Id.*

We agree with Appellants in concluding the proposed combination is problematic. Saslow flags data inconsistency errors. Saslow ¶ 531. For example, Saslow flags when a content record stores a spot length as 30 seconds but customer data stores it as 60 seconds. *Id.* The Examiner explains that “[o]ne of ordinary skill in the art would realize that similar marking[s] of Saslow] could have [been] incorporated into Bayer when prevention of automated replacement of an advertisement is desired.” Final Act. 7; Ans. 6. Even if Saslow’s similar data inconsistency flagging were somehow combined with Bayer and Iijima’s teachings, the Examiner does not provide sufficient evidence or technical reasoning as to how Saslow’s teaching of a data inconsistency flagging would be used with the Bayer-Iijima system in a way to render obvious prevent an automated replacement of an advertisement. Moreover, we fail to see how Saslow’s data inconsistency flagging would be inserted into metadata associated with Bayer’s broadcast log. In the absence of evidence or technical reasoning supporting the Examiner’s findings, we are persuaded the cited teachings of Bayer and Saslow, taken alone or in combination, do not teach or suggest the recited limitation.

Therefore, we agree with Appellants that the Examiner failed to show, by a preponderance of the evidence, that claim 1 would have been obvious in view of the asserted teachings of Bayer, Iijima, and Saslow. App. Br. 13. Accordingly, we do not sustain the rejections of (1) claim 1; (2) independent

claim 19, which includes a limitation substantially similar to the disputed limitation and was rejected on substantially the same bases as claim 1; and (3) claims 2–10 and 20–22, which depend from claims 1 and 19, respectively. Because this issue is dispositive of the appeal of the Examiner’s rejection of claims 1–10 and 19–22 under § 103, we need not address Appellants’ other arguments.

Claims 11–18

We likewise will not sustain the Examiner’s obviousness rejection of claim 11, which recites, in part, “inserting a plurality of flags into metadata associated with spot breaks scheduled during blackout times, wherein a first flag is [sic] indicates a restricted status of an advertiser, and a second flag indicates a restricted status of a particular advertisement.” The Examiner relies on Saslow to teach flagging and metadata logs. Final Act. 14–15 (citing Saslow ¶¶ 482, 531). The Examiner’s rejection, however, is premised on a finding that one of ordinary skill in the art would have realized that Saslow’s collected metadata logs could include registered information regarding an advertiser and a particular advertisement as shown in Figure 3C and paragraph 86 of Iijima. Final Act. 15; Ans. 8. Even if Saslow’s collected metadata logs were somehow combined with Bayer and Iijima’s teachings, the Examiner does not provide sufficient evidence or technical reasoning as to how Saslow’s teaching of collected metadata logs would be used in a way with the Bayer-Iijima system to render obvious including a first flag indicating a restricted status of an advertiser and a second flag indicating a restricted status of a particular advertisement. Moreover, we fail to see how Saslow’s collected metadata logs would be

inserted into metadata associated with Bayer's broadcast log. Thus, in the absence of evidence or technical reasoning supporting the Examiner's findings, we agree with Appellants that "the cited references do not teach or suggest a first flag is indicates a restricted status of an advertiser, and a second flag indicates a restricted status of a particular advertisement, and a rejection under 35 USC § 103 is unsupported." App. Br. 22.

Accordingly, we do not sustain the rejection of claim 11 and claims 12–18, which depend from claim 11. Because this issue is dispositive regarding the appeal of the Examiner's rejection of claims 11–18 under § 103, we need not address Appellants' other arguments.

CONCLUSION

The Examiner did not err in rejecting claims 1–22 under § 101, but erred in rejecting those claims under § 103.

DECISION

For the above reasons, the Examiner's decision to reject claim 1–22 is affirmed.

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