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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY GRIEBELER and BRIAN CURRAN

Appeal 2017-010088
Application 13/967,971[1]
Technology Center 3600

Before MICHAEL J. STRAUSS, JOSEPH P. LENTIVECH, and PHILLIP A. BENNETT, *Administrative Patent Judges*.

BENNETT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 4–11, 13, 15–19, and 21–23. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellants' Brief ("App. Br.") identifies Oracle International Corporation as the real party in interest. App. Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to measuring customer experience value. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A method comprising:
>
> receiving, by a computing system implementing a customer relationship management system that manages functionality for a website of an entity, Internet traffic data indicating Internet communications for the website of the entity, the Internet communications related to one or more actions by the entity to increase interaction by customers with the website of the entity, wherein the functionality of the website for the entity includes Internet commerce functionality;
>
> determining, by the computing system, a measure of acquisition performance of the website for the entity based on a summation of direct Internet traffic of the website, indirect Internet traffic of the website, and unidentified Internet traffic of the website, wherein the direct Internet traffic is based on the Internet traffic data indicating Internet traffic to the website of the entity as a result of a first action by the entity, wherein the indirect Internet traffic is based on the Internet traffic data indicating Internet traffic to the website of the entity as a result of a second action by the entity to raise awareness of the entity, and wherein the unidentified Internet traffic is based on the Internet traffic data indicating Internet traffic to the website of the entity by an unidentifiable source;
>
> determining, by the computing system, a measure of operational performance of the website for the entity based on a summation of a measure of visitors to the website and a ratio based on a measure of new visitors to the website and a measure of repeat visitors to the website;
>
> computing, by the computing system, a customer acquisition value of the entity for the website, the customer acquisition value based on a summation of the measure of acquisition performance of the entity for the website and the measure of operational performance of the entity for the website;
>
> computing, by the computing system, a customer retention value of the entity for the website, the customer retention value

based on a summation of a measure of average resolution time for resolving a problem with the website and a measure of uptime for customers accessing the website; and

computing, by the computing system, an operation efficiency value of the entity, the operation efficiency value based on a measure of content of the website that has been accessed by one or more customers interacting with the website;

generating, by the computing system, based on customer interaction with the entity, a customer experience value that indicates a measure of customer experience of the entity for the website, wherein the customer experience value is generated based on a summation of the customer acquisition value, the customer retention value, and the operation efficiency value;

generating, by the computing system, a graphical user interface that indicates the customer experience value in relation to a measure of customer satisfaction for the website; and

adjusting operation of the computing system for the customer relationship management system, wherein the operation of the computing system is adjusted to change the Internet commerce functionality of the website in response to the generated customer experience value, and wherein the adjusting includes:

dynamically creating one or more webpages for the website to cause the change in the Internet commerce functionality of the website.

App. Br. 37–38 (Claims Appendix).

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

England	US 2012/0290399 A1	Nov. 15, 2012
Galvin	US 8,386,639 B1	Feb. 26, 2013
Bhalla	US 2013/0054306 A1	Feb. 28, 2013
Sarma	US 8,645,221	Feb. 4, 2014

Dwyer, F. Robert, *Customer Lifetime Valuation to Support Marketing Decision Making*, JOURNAL OF DIRECT MARKETING, vol. 11 no. 4, p. 6 (Fall 1997)
Analytics Basics: Unique Visitors, New vs. Returning Visitors, Click Z, (May 23, 2018).
Jeff Haden, *How to Dig Deeper in Your Web Analytics*, Owner's Manuel (March 5, 2012).

REJECTIONS

Claims 1, 4–11, 13, 15–19, and 21–23 are rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement. Final Act. 6–8.

Claims 1, 4–11, 13, 15–19, and 21–23 are rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Act. 8–13.

Claims 1, 4–11, 13, 16, 17, 19, and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over England, Dwyer, Galvin, and Analytics Basics. Final Act. 13–26.

Claim 15 stands rejected under 35 U.S.C. § 103 as being unpatentable over England, Dwyer, Galvin, Analytics Basics, and DigDeeper. Final Act. 26–29.

Claim 18 and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over England, Dwyer, Galvin, Analytics Basics, and DigDeeper. Final Act. 29–31.

Claim 22 stands rejected under 35 U.S.C. § 103 as being unpatentable over England, Dwyer, Galvin, Analytics Basics, and Sarma. Final Act. 31–32.

ISSUES

First Issue: Has the Examiner erred in determining the limitation "dynamically creating one or more webpages for the website to cause the change in the Internet commerce functionality of the website," lacks support in the Specification as originally filed?

Second Issue: Has the Examiner erred in determining the claims lack eligibility under the two-step *Alice/Mayo* inquiry?

Third Issue: Has the Examiner erred in determining England and Dwyer teach or suggest the "adjusting" limitation recited in the independent claims?

ANALYSIS

First Issue

The Examiner rejects the independent claims as lacking written description with respect to the "adjusting" limitation. The Examiner finds that, although the Specification describes an adjustment operation, it does not specifically describe that the "adjustment" operation is in response to a generated customer experience value. Ans. 3. The Examiner further finds that the Specification does not describe any "internet commerce functionality" nor does it provide any disclosure that the adjustment operation is directed to any such functionality. *Id.* The Examiner explains:

> In summary, although Claims 1, 11, and 19 have support for a generated customer experience value, and creating one or more webpages, it DOES NOT have support for creating one or more webpages **to cause change in the Internet functionality of the website in response to** the generated customer experience value.

Id.

Appellants contend the Examiner has erred because the recited "adjusting," and all of its associated actions, are disclosed in the Specification. App. Br. 11–16. Appellants identify paragraph 24 of the Specification as supporting the element "adjust operation of the processor for the customer relationship management system" because it states "when the present invention is implemented in a CRM system, the CRM system may be able to automatically adjust operation of other business functions provided by the CRM system in response to the CXV. App. Br. 12 (quoting Spec. ¶ 24). Appellants further argue the Specification provides support for "wherein the operation of the computing system is adjusted to change the Internet commerce functionality of the website in response to the generated customer experience value," because paragraph 35 of the Specification "describes 'Internet and mobile commerce' as one of many services of that a user of a CRM system (e.g., CRM system 310) according to the Invention may be able to manage." App. Br. 13.

Appellants contend the limitation "wherein the adjusting includes dynamically creating one or more webpages for the website to cause the change in the Internet commerce functionality of the website" is supported by paragraphs 24, 25, 27–29, 34, and 35. App. Br. 13. Appellants argue (1) paragraph 35 describes using the CRM to manage services, (2) paragraph 27 describes those services include applications servers and web servers, (3) paragraph 29 describes that an application server can create dynamic webpages. Appellants argue that, taken together, these collective disclosures support the limitation because "[t]he functionality described in the Application for a CRM system that enables users with Internet and mobile commerce functionality can thus be implemented with an application server,

which 'create webpages dynamically' to cause a change in the Internet commerce functionality of a website." App. Br. 14. Finally, Appellants argue that this modified functionality is "in response to the generated customer experience value" because paragraph 39 describes the customer experience value as being used to "enable an entity to improve a response to customer's needs and preferences." App. Br. 14.

We are not persuaded by these arguments because the Specification fails to demonstrate the Appellants possessed dynamic creation of web pages *in response to* a generated customer experience value. Although the Specification describes dynamic creation of web pages, and the Specification also describes generating a customer experience value, nothing in the Specification ties the dynamic generation of those web pages to the customer experience value. There is only one detail regarding the specific adjustments that are made in the system—that the adjustments may include "operation of other business functions provided by the CRM system." Spec. ¶ 24.

Appellants argue that the Specification makes clear that Internet commerce is one of these "business functions." Reply Br. 2–3 (citing Spec. ¶ 35). But even accepting this argument, the fact remains there is only a single reference in the Specification to "dynamically" generating webpages—the description in paragraph 29. Spec. ¶ 29 ("In some embodiments, an application server may create web pages dynamically for displaying on an end-user (client) system."). However, Appellants do not identify, nor do we discern, any disclosure that the dynamically generated web pages described in paragraph 29 of the Specification are generated "in response to the generated customer experience value." Nothing in

paragraph 29 indicates why the dynamic creation of webpages occurs, nor is there any disclosure of a scenario that causes such dynamic creation to take place. Rather, the description in paragraph 29 is better characterized as a general summary of the capabilities of the web functionality provided in Appellants' system. The description of "dynamically creating one or more webpages" description is untethered to the generation of a customer experience value. As such, the various isolated disclosures relied upon by Appellants are too attenuated to support the very specific causal and functional relationships between the CRM, the Internet commerce functionality, the dynamically generated webpages, and the customer experience value, and we are not persuaded the Examiner erred in rejecting the claims for lack of written description.

Second Issue

The Examiner concludes the claims are directed to ineligible subject matter under the *Alice/Mayo* inquiry. With respect to the first step, the Examiner determines the claims are directed to a combination of abstract ideas. More specifically, the Examiner determines the claim limitations are directed to collecting information, analyzing information, and transmitting the information in a way similar to *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). The Examiner also finds that the generation of a customer experience value is a mathematical formula which also is an abstract idea. Final Act. 8–10; Ans. 3–4. Applying the second step of *Alice/Mayo,* the Examiner finds that the claims do not include additional elements sufficient to amount to significantly more than the abstract idea itself because those additional elements are implemented using generic

computer components performing their basic functions of storing, retrieving, sending, and processing data. Final Act. 11–12. The Examiner further finds Appellants' Specification describes the use of general purpose computers, and based on that description, "one would reasonably deduce the aforementioned steps are all functions that can be done on generic components." Final Act. 12 (citing Spec. ¶ 27); Ans. 7–8.

Appellants argue the Examiner's analysis is flawed because "the Examiner fails to clearly articulate a specific abstract idea . . . [and] identifies multiple concepts strung together as opposed to one clearly identified abstract idea." App. Br. 19. Appellants argue the invention is similar to that found eligible in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). Appellants further argue the claims are "not simply 1) comparing new and stored information and using rules to identify options, or 2) applying a Mathematical Relationship/Formulas as ratios, summations, and values to analyze the data for transmission purposes." App. Br. 23. Appellants contend the claims instead "determin[e] a measure of customer experience of an entity based on disparate measures including Internet communications of a website of the entity and adjusting operation of a CRM system for Internet commerce functionality of the website based on the measure of customer experience." *Id.*; *see also* Reply Br. 5. Appellants argue that this "unique 'combination' of steps in the claims for an 'inventive concept.'" *Id.* Appellants further contend the Examiner's analysis under the second step is flawed because "the Examiner did not identify all of the elements as being part of an abstract idea, and yet fails to consider those elements as additional elements for purposes of the 'significantly more' analysis." Reply Br. 6.

Although we agree with the Examiner that the claim is directed to an abstract idea, we are persuaded the Examiner has erred with respect to the second step of the inquiry. The Examiner determines the claims are directed to an abstract idea because "the claims do not go beyond requiring the collection, analysis, and display of available information in a particular field." Final Act. 13. We agree with Appellants that the Examiner's analysis under the second step fails to adequately consider those limitations that are additional to the abstract idea. In addition to reciting elements directed to the collection, analysis, and display of information, Appellants' claims also include steps involving changing how a website operates by dynamically generating new webpages, based on the collected data. The Examiner's analysis does not explain why this additional claimed functionality, which goes beyond the abstract idea of collecting, analyzing, and displaying information, is insufficient to supply an inventive concept. Although the Examiner states that "adjust[ing] operation of the computing system by creating a webpage does not impose any meaningful limits on the computer implementation of the abstract idea," the Examiner provides insufficient reasoning or evidence in support of this statement. As such, we agree with Appellants that the Examiner has erred in determining the claims do not provide an inventive concept under the second step of the *Alice/Mayo* inquiry, and we do not sustain the rejection under 35 U.S.C. § 101.

Third Issue

In rejecting the independent claims under 35 U.S.C. § 103, the Examiner finds England teaches the "adjusting" limitation with the exception of implementing the "adjusting" using a "customer relationship management" system. Final Act. 16 (citing England ¶¶ 85–86). The

Examiner finds that although England describes a CRM, "it does not explicitly state its use or how it is used in the system." *Id.* (citing England ¶ 142). The Examiner turns to Dwyer, finding that it teaches the use of a CRM system to determine a customer experience value. Final Act 18. The Examiner concludes that it would have been obvious to combine England and Dwyer "because both are analogous art utilizing data to make management decisions based on customer experience" and combining them is "the simple substitution of one known element for another producing a predictable result [that] renders the claim obvious." Final Act. 18.

Appellants argue England and Dwyer do not teach or suggest the "adjusting" limitation because "England is silent with regard to adjusting operation of a CRM system that changes Internet commerce functionality as recited in claim 1." App. Br. 30. We agree with Appellants.

Neither Dwyer nor England teach or suggest using a CRM to adjust the functionality of a website by dynamically creating webpages. In particular, neither cited reference teaches that the CRM system makes changes to the website. England describes the use of a publisher management sub-module that is "used to schedule the automatic publishing and un-publishing of content variations within predetermined webpages to keep the website fresh." England ¶ 85. England references a CRM in paragraph 142, but only teaches its use in a conventional manner—in connection with managing customer contact lists. Similarly, Dwyer does not describe the use of a CRM system. At most, England and Dwyer teach the use of CRM systems generally and in a conventional manner. As such, they do not teach or suggest the disputed limitation, and we do not sustain the rejections under 35 U.S.C. § 103.

DECISION

We affirm the Examiner's rejection of claims 1, 4–11, 13, 15–19, and 21–23 under 35 U.S.C. § 112(a).

We reverse the Examiner's rejection of claims 1, 4–11, 13, 15–19, and 21–23 under 35 U.S.C. § 101.

We reverse the Examiner's rejections of claims 1, 4–11, 13, 15–19, and 21–23 under 35 U.S.C. § 103.

Because we have affirmed at least one ground of rejection for each claim on appeal, we affirm the Examiner's decision to reject the claims. 37 C.F.R. § 41.50(a)(1).

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. § 1.136(a)(1)(iv).

AFFIRMED