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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID DOWNEY, BRUCE J. ANDERSON, and
DANIEL C. WILSON

Appeal 2017-010461
Application 12/024,714¹
Technology Center 2400

Before TERRENCE W. McMILLIN, KARA L. SZPONDOWSKI, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

McMILLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 8–20, 48–51, and 61–74. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is Invidi Technologies Corporation. App. Br. 1.

THE CLAIMED INVENTION

The present invention relates generally to “the distribution of assets, such as ads or other material, together with content such as programming via a network interface,” and more particularly to “verifying consumption of assets by network users.” Spec. 1, ll. 11–13. Independent claims 8 and 64 are directed to methods and independent claim 48 is directed to an apparatus. App. Br. 23, 25, 26.

Claim 8, reproduced below, is representative of the claimed subject matter:

8. A method for use in connection with the delivery of content to users of a communications network, comprising:

providing a targeted asset delivery system in connection with said communications network, wherein assets are targeted and delivered to said users of said communications network by matching target parameters of said assets specified by an asset provider to classification parameters of said users, said classification parameters including at least one demographic attribute;

operating a user equipment device to receive content from a communications network interface, wherein said content includes programming and associated targeted assets;

using said user equipment device to output said content to a user;

monitoring a consumption status of at least one of said targeted assets output by said user equipment device, said consumption status including, in the case of skips, an indication concerning a command to skip, at least in part, said at least one targeted asset while continuing delivery of programming associated with said at least one targeted asset and, in the case of tune-aways, an indication concerning a command to tune-away from a bandwidth segment of programming associated with said at least one targeted asset; and

generating a signal indicative of said consumption status of said at least one of said targeted assets, at least one bandwidth segment associated with said outputting, and user characterization information regarding said user to which said targeted assets are targeted for at least a portion of said targeted assets, said user characterization information including said at least one demographic attribute.

REJECTIONS ON APPEAL

Claims 8–20, 48–51, and 61–74 stand rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Final Act. 2.

Claims 8–10, 13–18, 20, 61, 62, 66, 67, and 71 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McLean et al. (US 2007/0113240 A1, published May 17, 2007) (“McLean”), Dmitriev et al. (US 2008/0092159 A1, published Apr. 17, 2008) (“Dmitriev”), and Price et al. (US 7,813,954 B1, issued Oct. 12, 2010) (“Price”). Final Act. 10–11.

Claims 11, 12, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McLean, Dmitriev, Price, and Eldering et al. (US 2003/0149975 A1, published Aug. 7, 2003) (“Eldering”). Final Act. 18.

Claims 48–51, 63, and 72–74 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McLean, Dmitriev, Price, Cruice (US 2008/0127249 A1, published May 29, 2008), and Ray et al. (US 2007/0288951 A1, published Dec. 13, 2007) (“Ray”). Final Act. 19–20.

Claims 64 and 65 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McLean, Dmitriev, Slaney et al. (US 2010/0242063 A1, published Sep. 23, 2010) (“Slaney”), and Price. Final Act. 24.

Claims 68–70 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McLean, Dmitriev, Price, and Slaney. Final Act. 28.

ANALYSIS

35 U.S.C. § 101 Rejections

Alice Corp. Pty. Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under 35 U.S.C. § 101. In the first step, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice*, 134 S. Ct. at 2355.

The Examiner concludes the claims are directed to the abstract ideas of “targeting one or more advertisements to an intended audience similar to the abstract idea of basic economic/commercial principle.” Ans. 9; *see Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014).

Appellants argue that the claims are not directed to an idea itself, but rather are directed to “providing a targeted asset delivery system or generating a signal indicative of said consumption status,” which cannot be “performed by a human by gathering data,” and instead “requires that certain steps are performed by a ‘user equipment device.’” App. Br. 7.

We are not persuaded by Appellants’ arguments. We agree with the Examiner that the claims are directed to the abstract idea of targeting advertisements to an intended audience (targeted assets) before delivering free content (outputting content to a user), which involve basic economic/commercial principles and/or methods of organizing human activity. Ans. 9–10 (citing *Ultramercial*, 772 F.3d at 715 (“Although certain additional limitations, such as consulting an activity log, add a degree of particularity, the concept embodied by the majority of the limitations describes only the abstract idea of showing an advertisement before

delivering free content”)); *see also* Final Act. 3; *Affinity Labs. of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016) (“we hold that the concept of delivering user-selected media content to portable devices is an abstract idea”); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369–70 (Fed. Cir. 2015) (the practice of tailoring advertising to individual customers is a “fundamental . . . practice long prevalent in our system”).

Here, the claims are directed to receiving data (targeted assets), monitoring and collecting data (consumption status of the assets) and generating signals indicating the data associated with the assets (consumption status, bandwidth segment or channel, and user characterization information) (claims 8 and 64); transmitting and receiving data (programming and associated assets, signals), monitoring and collecting data (consumption status of the assets, presence information, level of interest) and crediting rewards values based on the data associated with the assets (claim 48). The claims involve nothing more than receiving, storing, and analyzing data, activities that fit squarely within the realm of abstract ideas. *See Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353-54 (Fed. Cir. 2016) (“collecting information, analyzing it, and displaying certain results of the collection and analysis,” and “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, [are] essentially mental processes within the abstract-idea category.”).

In the second step of *Alice*, 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 Collaborative Serv.s v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1297-1298 (2012)). In other words, the second step is to “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.* (quoting *Mayo*, 132 S. Ct. at 1294).

Appellants argue “the claims improve the technological field of monitoring and incentivizing asset consumption.” App. Br. 10. According to Appellants, “[i]t will be appreciated that it is useful to advertisers to learn whether a particular advertisement was of interest to the targeted audience during selected programming.” App. Br. 11. Appellants further argue that the claims are rooted in in the “important field of television advertising” and are confined “to a particular useful application” as it “relates to monitoring consumption of assets in a targeted advertising system and reporting specific items of information concerning such monitoring,” that is “both useful and particular,” and is “not well-understood, routine, or conventional in the field.” App. Br. 12–13.

We agree with the Examiner’s findings that a “cable television network with targeted advertisements is well-understood, routine and conventional in the field” and that “[m]onitoring the consumption status output by the television and transmitting the monitored consumption status back to the headend to be analyzed is well-understood, routine and conventional in the field.” Ans. 15. In particular, we agree with the Examiner’s findings that the claimed “monitoring...” and “generating...” steps “represent insignificant ‘data-gathering steps.’” *Id.* Although Appellants assert certain limitations must be performed by a “user

equipment device,” the question is not whether a human using pen and paper can receive data, output data, monitor a consumption status, or generate a signal electronically as recited in the claims, but whether the claims are merely invoking computer functionality to do what a human might do mentally or with pen and paper. For example, a person using pen and paper can receive and provide information (receive and output data), track when a person skips a targeted ad or changes the channel during a targeted ad (monitor a consumption status), and provide information regarding the tracking (generate a signal). If a method can be performed by human thought, these processes remain unpatentable even when automated to reduce burden to the user. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*, [409 U.S. 63 (1972)].”). Accordingly, Appellants have not adequately shown the claims are not directed to an abstract idea.

We are not persuaded by Appellants’ arguments and agree with the Examiner’s findings and conclusions. *See* Ans. 14–20. We note there is a difference between improvements to computer functionality or a technical field, on the one hand, and uses of existing computers as tools to perform a particular task, on the other. Here, the claims do not concern an improvement to computer capabilities, but instead relate to improvements in monitoring and reporting information, that simply instruct the practitioner to implement the abstract idea on a generic computer. We agree with the Examiner that the claim “limitations require no more than a generic computer to perform generic computer functions that are well understood,

routine and conventional activities previously known to the industry.” Ans. 20. Appellants have not directed our attention to anything in the record that shows, nor can we find, any specialized computer hardware or other “inventive” computer components are required. *See* Spec. 7 (a user equipment device is, for example, “customer premises equipment such as a set-top box or enhanced television or portable equipment such as a wireless phone, PDA, portable hard-drive based devices or the like”). Rather than reciting additional elements that amount to “significantly more” than the abstract idea, the pending claims, at best, add only “operating a user equipment device” and “using said user equipment device” (claims 8 and 64), and an apparatus comprising “processors operative for” performing the steps (claim 48), which does not satisfy the inventive concept. *See, e.g., DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (internal quotation marks omitted) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm is beside the point.”). And merely limiting the scope of the claims to a particular technological environment or application, without more, does not change the outcome. *Alice*, 134 S. Ct. at 2358. Appellants have not adequately explained how or provided persuasive evidence to show why the claims are performed such that they are not routine and conventional functions of a generic computer.

We are also not persuaded Appellants’ claims are similar to those in *DDR*. *See* Reply Br. 2–3. In *DDR*, the Federal Circuit found that the challenged claims were valid because they “specif[ied] how interactions with the Internet are manipulated to yield a desired result – a result that

overrides the routine and conventional” aspects of the technology. *DDR*, 773 F.3d at 1258-59. Here, we do not discern that these claims “stand apart,” like those in *DDR* because they merely recite the performance of some business practice known from the pre-Internet world, along with the requirement to perform it on the Internet. *See DDR*, 773 F.3d at 1257. In other words, Appellants have not demonstrated their claimed generic computer components are able in combination to *perform functions that are not merely generic*, as the claims in *DDR*. We are not persuaded the claims are similar to those in *BASCOM* and *Ultramercial* (*see* Reply Br. 3–5) for similar reasons.

The claims, when viewed as a whole, are nothing more than conventional processing functions that courts have routinely found insignificant to transform an abstract idea into a patent-eligible invention. As such, the claims amount to nothing significantly more than an instruction to implement the abstract idea on a generic computer – which is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claims 8–20, 48–51, and 61–74.

35 U.S.C. § 103(a) Rejections

Claims 8–20, 61, 62, and 66–71

Claim 8 recites, *inter alia*, “generating a signal indicative of said consumption status of said at least one or said targeted assets, at least one bandwidth segment associated with said outputting, and user characterization information regarding said user to which said targeted assets

are targeted for at least a portion of said targeted assets, said user characterization information including said at least one demographic attribute.”

Appellants contend that McLean does not teach reporting information “indicative of consumption status, bandwidth segment and user characterization information.” App. Br. 17. Appellants further argue Dmitriev does not teach monitoring tune-aways, or generating a signal indicating bandwidth segment,” and that Price does not teach generating a signal indicative of bandwidth segment and demographic attribute. App. Br. 18.

Appellants’ argument against each of the references separately from one another does not persuasively rebut the combination made by the Examiner. One cannot show non-obviousness by attacking references individually, where the rejections are based on combinations of references. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

We agree with the Examiner that McLean, Dmitriev, and Price, *in combination*, teach “accounting for asset skips or tune-away events in a targeted advertising system by generating a signal indicative of consumption status, bandwidth segment, and user characterization information.” Ans. 22. Specifically, we agree with the Examiner’s finding that Dmitriev teaches a user skipping targeted advertisements, upon which the program scheduler updates the user’s profile; and Price teaches an indication that a user is tuning away from a bandwidth segment of programming associated with a targeted advertisement, correlating the tune-away with metadata associated with the advertisement, and generating user viewing preferences in a user

profile, including broadcast and channel information and demographic user profile information. Ans. 23 (citing Dmitriev Figs. 1, 4A, ¶¶ 24, 90, 99–100, 102, 104; Ans. 23–24 (citing Price Figs. 2, 3, 5, 10, col. 7, l. 61–col. 8, l. 9, col. 8, ll. 15–21, 54–60, col. 11, ll. 7–25)). Appellants have not presented substantive arguments to address the Examiner’s findings.

Accordingly, we sustain the 35 U.S.C. § 103 rejection of independent claim 8 and dependent claims 9–20, 61, 62, 66–71, not separately argued. *See* App. Br. 19–20.

Claims 48–51, 63, and 72–74

Claim 48 recites “determining asset consumption information based on said received signals . . . said asset consumption information comprises a first indication of a user presence and a second indication of a level of interest of said user associated with said consumed portion of said one or more of said assets; and crediting value to said rewards account for said user based on said asset consumption information.”

Appellants contend that Cruice does not teach a value being “credited to a rewards account based on a first indication of presence and a second indication of a level of interest, much less combined with any indication of bandwidth segment.” App. Br. 20.

Appellants’ argument against the references separately from one another does not persuasively rebut the combination made by the Examiner. One cannot show non-obviousness by attacking references individually, where the rejections are based on combinations of references. *Merck*, 800 F.2d at 1097; *Keller*, 642 F.2d at 425.

We agree with the Examiner that the references, *in combination*, teach a “rewards account platform operable to maintain a flexible rewards account for a user and crediting value to said rewards account for said user based on said asset consumption information; and a second indication of a level of interest of said user associated with said consumed portion of said one or more of said assets.” Ans. 27–28. Specifically, we agree with the Examiner’s finding that Dmitriev’s “determining whether a user is or is not watching an advertisement” teaches a first indication of user presence; Ray’s questions presented to user regarding attitudes towards products and advertisements teaches “a second indication of a level of interest of said user”; and Cruice teaches a “reward system that rewards for advertising viewership” using “credit towards the monthly bill” or coupons directed to users. Ans. 28 (citing Dmitriev ¶¶ 74, 141); Ans. 29 (citing Ray 8–9, 12); Ans. 28–29 (citing Cruice Figs. 2, 3, ¶¶ 31–34). Appellants have not presented substantive arguments to address the Examiner’s findings.

Appellants further argue it would be improper to combine Ray with McLean, Dmitriev, Price, and Cruice, because Ray’s teaching of answering questions at the end of an advertisement “renders the first indication of user presence superfluous.” App. Br. 20–21. We agree with the Examiner’s findings that the combination of Dmitriev, Cruice, and Ray teaches two indications of user presence and level of interest and “only strengthens the confirmation that the user has indeed consumed the advertisement.” Ans. 29. Again, Appellants have not presented substantive arguments to address the Examiner’s findings.

Accordingly, we sustain the 35 U.S.C. § 103 rejection of independent claim 48 and dependent claims 49–51, 63, and 72–74, not separately argued. *See App. Br. 20.*

Claims 64 and 65

Claim 64 recites “generating at least one signal indicative a bandwidth segment associated with said assets as well as of said quantity and quality of consumption for at least a portion of said assets and user characterization information regarding said user, said user characterization information including at least one demographic attribute of said user.”

Appellants contend that Slaney’s reports that a viewer has turned off an advertisement teaches quantity of consumption, but does not teach reporting quality of consumption. *App. Br. 21.*

Appellants’ argument against the references separately from one another does not persuasively rebut the combination made by the Examiner. One cannot show non-obviousness by attacking references individually, where the rejections are based on combinations of references. *Merck*, 800 F.2d at 1097; *Keller*, 642 F.2d at 425.

We agree with the Examiner that Dmitriev teaches “monitoring a quantity of consumption of said assets” that indicates “whether or not substantially an entirety of said asset was consumed,” and Slaney’s monitored channel changes and viewing feedback teach monitoring a quality of consumption of assets that indicates a level of interest by the user. Final Act. 25 (citing Dmitriev ¶¶ 74, 104); Final Act. 26 (citing Slaney Figs. 5, 6, ¶¶ 31, 33, 36–37, 38, 40). Appellants have not presented substantive arguments to address the Examiner’s findings.

Appeal 2017-010461
Application 12/024,714

Accordingly, we sustain the 35 U.S.C. § 103 rejection of independent claim 64 and dependent claim 65, not separately argued. *See* App. Br. 21.

DECISION

The Examiner's rejection of claims 8–20, 48–51, and 61–74 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejections of claims 8–20, 48–51, and 61–74 under 35 U.S.C. § 103(a) are 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)(1)(iv).

AFFIRMED