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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFF LITTLEJOHN, BOBBI DENISE SCHUSTER, KEYIN HSU,
and JENNIFER PEREZ

Appeal 2017-010465¹
Application 12/475,375²
Technology Center 3600

Before MICHAEL C. ASTORINO, NINA L. MEDLOCK, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

MEDLOCK, *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 43–47, 49–52, 54–58, and 60. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellants’ Appeal Brief (“App. Br.,” filed February 21, 2017) and Reply Brief (“Reply Br.,” filed August 4, 2017), and the Examiner’s Answer (“Ans.,” mailed June 6, 2017) and Final Office Action (“Final Act.,” mailed September 22, 2016).

² Appellants identify iHeartMedia Management Services, Inc. as the real party in interest. App. Br. 4.

CLAIMED INVENTION

Appellants' claimed invention "relates generally to utilizing unique identifiers, and more particularly to tracking public performances of works using unique identifiers" (Spec. ¶ 2).

Claims 43, 50, and 56 are the independent claims on appeal.

Claim 43, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

43. A method comprising:

[(a)] using a data pull subsystem to obtain, from a first content provider, a first identifier identifying a first instance of a work indexed in accordance with a first identification system used by the first content provider, by executing a program instruction in a computer system;

[(b)] using the data pull subsystem to obtain, from a second content provider, a second identifier identifying a second instance of the work indexed in accordance with a second identification system used by the second content provider, the second identification system being different from the first identification system, by executing a program instruction in a computer system;

[(c)] associating the first identifier and the first instance of the work with a unique identifier selected from a set of unique identifiers by executing a program instruction in a computer system;

[(d)] associating the second identifier and the second instance of the work with the unique identifier by executing a program instruction in a computer system;

[(e)] storing and associating attributes of the work with the first identifier, the second identifier, and the unique identifier, in a unified numbering system (UNS) database, by executing a program instruction in a computer system;

[(f)] receiving a message relating to a broadcast of at least one of the first instance of the work or the second instance of the work;

[(g)] determining whether the message includes the unique identifier; and

[(h)] in response to determining that the message does not include the unique identifier, tracking public performances of either the first instance of the work or the second instance of the work based on the attributes of the work, by executing a program instruction in a computer system.

REJECTIONS³

Claims 43–47, 49–52, 54, and 55 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.⁴

Claims 43–47, 49–52, 54–58, and 60 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 43–47, 49–52, 54–58, and 60 are rejected under 35 U.S.C. § 103(a) as unpatentable over Chen (US 2006/0116926 A1, pub. June 1, 2006) and Stuhec (US 7,856,597 B2, iss. Dec. 21, 2010).

ANALYSIS

Written Description

Whether a specification complies with the written description requirement of 35 U.S.C. § 112, first paragraph, is a question of fact and is assessed on a case-by-case basis. *See, e.g., Purdue Pharma L.P. v. Faulding, Inc.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000) (citing *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1561 (Fed. Cir. 1991)). The disclosure, as originally filed, need not literally describe the claimed subject matter (i.e.,

³ The Examiner has withdrawn the rejection of claims 43–47, 49–52, 54–58, and 60 under 35 U.S.C. § 112, second paragraph. Ans. 2.

⁴ The Examiner has withdrawn the rejection of claims 56–58 and 60 under 35 U.S.C. § 112, first paragraph. Ans. 2.

using the same terms or *in haec verba*) in order to satisfy the written description requirement. But the Specification must convey with reasonable clarity to those skilled in the art that, as of the filing date, Appellants were in possession of the claimed invention. *See id.*

In rejecting the claims under § 112, first paragraph, the Examiner takes the position that the Specification does not include adequate written description support for “in response to determining that the message does not include the unique identifier, tracking public performances of either the first instance of the work or the second instance of the work based on the attributes of the work,” as recited in independent claim 43, and similarly recited in independent claim 50 (Final Act. 2–3). We, however, agree with Appellants that the Specification includes the requisite written description support at least at paragraphs 44, 60, 69, and 71 (App. Br. 9–10). Therefore, we do not sustain the Examiner’s rejection.

Patent-Ineligible Subject Matter

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

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 (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 Corp.*, 134 S. Ct.

at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., 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 there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

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. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

In rejecting the pending claims under § 101, the Examiner determined that the claims are directed to “setting advertising rates, polling data and statistical estimates of how often a particular advertisement is aired” (Final Act. 3–5). The Examiner, however, revised this determination in the Answer. There, the Examiner determined that the claims are directed to “tracking public performances of a work” (Ans. 7) — a concept that the Examiner concluded is similar to concepts that the courts have identified as abstract (*id.*). The Examiner also determined that the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception (*id.* at 8–9).

We are not persuaded that the Examiner erred in determining that the pending claims are directed to an abstract idea. Independent claim 43, for example, recites a method comprising (1) receiving a first identifier identifying a first instance of a work from a first content provider; (2) receiving a second identifier identifying a second instance of the work from a second content provider; (3) associating the first identifier and the first instance of the work with a unique identifier selected from a set of unique identifiers; (4) associating the second identifier and the second instance of the work with the unique identifier; (5) storing and associating attributes of the work with the first identifier, the second identifier, and the unique identifier, in a database; (6) receiving a message relating to a broadcast of at least one of the first instance of the work or the second instance of the work; (7) determining whether the message includes the unique identifier; and (8) if the message does not include the unique identifier, tracking public performances of either the first instance of the work or the second instance of the work based on the attributes of the work. In other words, claim 43 involves nothing more than receiving/collecting information (i.e., receiving multiple instances of content from multiple different content providers; storing and associating the multiple instances, different identifiers of the multiple instances, and content attributes of multiple instances with a unique identifier; and receiving a message relating to broadcast of at least one of the multiple instances); and analyzing the information (i.e., determining whether the message includes the unique identifier, and if not, comparing other message content with the stored content attributes) — activities squarely within the realm of abstract ideas. *See, e.g., Electric Power Group LLC v. Alstom, S.A.*, 830 F.3d 1350, 1353—

54 (Fed. Cir. 2016) (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as matters within the realm of abstract ideas); *Content Extraction & Transmission v. Wells Fargo Bank*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (holding that that the claim was “drawn to the abstract idea of 1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory” — concepts that the court concluded were “undisputedly well-known.”).

Although Appellants acknowledge that the claims involve data manipulation techniques, Appellants argue that, rather than attempting to patent a series of steps that do no more than gather, analyze, and store data, the present claims are directed to “a concrete and tangible real-world result — a public-performance tracking technique” (*id.* at 8). Yet, the fact that the claimed invention may result in real world consequences does not change that the claims are directed to an abstract idea. *Cf. CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011) (“The Court [in *Parker v. Flook*, 437 U.S. 584 (1978)] rejected the notion that the recitation of a practical application for the calculation could alone make the invention patentable.”).

We also do not agree with Appellants that there is any parallel between the present claims and those held patent-eligible in *McRO* or *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) (App. Br. 18–19). Appellants argue that, like the claims in *DDR Holdings*, Appellants’ claimed invention is necessarily rooted in computer technology to overcome a problem (i.e., tracking media items played out during a

broadcast) specifically arising in the realm of computer networks (App. Br. 19). Yet, it is not clear to us how performance tracking is “necessarily rooted in computer technology” or otherwise tied to a problem only arising in computer operations. Public-performance tracking existed before and still exists outside of computer technology. And, unlike the situation in *DDR Holdings*, there is no indication here that a computer is used other than in its normal, expected, and routine manner, e.g., for receiving, processing, and transmitting information.

Appellants argue that the claims solve a problem that does not exist outside of computerized systems, i.e., how to improve computerized tracking of media items played out during a broadcast (*id.*). Yet, as the Federal Circuit cautioned in *DDR Holdings*, “not all claims purporting to address Internet-centric challenges are eligible for patent.” *DDR Holdings*, 773 F.3d at 1258. Thus, in *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014), although the patentee argued that its claims were “directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before,” *Ultramercial*, 772 F.3d at 714, the court found that this alone could not render its claims patent-eligible where the claims merely recited the abstract idea of “offering media content in exchange for viewing an advertisement,” along with “routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.” *Id.* at 715–716.

Similarly here, we find that the invocation of a computer network is not sufficient to transform Appellants’ otherwise patent-ineligible abstract idea into patent-eligible subject matter. We find, as did the Examiner, that

the claims are directed to the abstract idea of “tracking public performances of a work” (Ans. 7). Narrowing that abstract idea to use in electronic commerce merely limits the use of the abstract idea to a particular technological environment, which the Court made clear in *Alice* is insufficient to transform an otherwise patent-ineligible abstract idea into a patent-eligible subject matter. *See Alice Corp.*, 134 S. Ct. at 2358.

There is no indication here that invocation of a computer network adds any inventive concept. For example, there is no indication that the particular operations recited in claim 43 require any specialized computer hardware or other inventive computer components, invoke any assertedly inventive programming, or that the claimed invention requires more than the use of generic computer components to perform the claimed method steps. To the contrary, the Specification discloses just the opposite, i.e., that the claimed invention is implemented using generic computer components (*see* Spec. ¶¶ 90, 91).

We also are not persuaded that the facts in *McRO* are sufficiently analogous to the present facts to control the outcome here. In *McRO*, the court determined that the claim was not directed to an abstract idea, and was patent-eligible under 35 U.S.C. § 101 where the claim “focused on a specific asserted improvement in computer animation” of facial expressions made during speech and where “incorporation of the claimed rules, not the use of the computer . . . ‘improved [the] existing technological process’ by allowing the automation of further tasks.” *McRO*, 837 F.3d at 1314. The court emphasized that the automation went beyond, for example, merely “organizing [existing] information into a new form.” *Id.* at 1315 (internal quotes and citation omitted). Instead, the claim used limited rules in a

process specifically designed to achieve an improved technological result in conventional industry practice. *Id.* at 1316. In this sense, *McRO* is akin to *DDR Holdings, Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), and similar decisions which have held claims patent-eligible where the claimed invention provided a technological improvement in industry practice. *See DDR Holdings*, 773 F.3d at 1257 (holding that claims reciting computer processor for serving “composite web page” were patent eligible because “the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks”); *Enfish*, 822 F.3d at 1338 (holding that claims directed to self-referential table for computer database were patent eligible because claims were directed to an improvement in the functioning of a computer); *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1259 (Fed. Cir. 2017) (holding that claims directed to “an improved computer memory system” having many benefits were patent eligible).

In contrast here, the claims at issue collect data, manipulate that data, and then render an output. Appellants do not persuasively argue that the claims provide any improvement in technology or that they improve the functionality of the computer itself.

Appellants assert, as described above, that the claimed invention improves computerized tracking of media items played out during a broadcast (App. Br. 19). But, we are not persuaded that the claims, thus, represent any technological improvement. Instead, it appears clear, when considered in light of the Specification, that the focus of the claimed invention, as recited, for example, in independent claims 43, is on achieving a business objective (i.e., accurately determining how often a particular work

has been broadcast) (*see* Spec. ¶¶ 3–5), and not on any claimed means for achieving that goal that improves technology.

We are not persuaded, on the present record, that the Examiner erred in rejecting claims 43–47, 49–52, 54–58, and 60 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection.

Obviousness

We are persuaded by Appellants’ argument that the Examiner erred in rejecting independent claims 43, 50, and 56 under 35 U.S.C. § 103(a) because Chen, on which the Examiner relies, does not disclose or suggest storing and associating two different identifiers associated with different instances of the same work with a single unique identifier, i.e., limitations (c), (d), and (e), as recited in claim 43, and similarly recited in claims 50 and 56 (App. Br. 24–25).

Chen is directed to a system and method for creating and operating Internet-based publishing and advertising forums, and discloses that the forums exist on the Internet as public Web sites that allow free access to all Internet users (Chen ¶ 10). The forums allow authors to publish their works on the Internet, and to benefit financially from a recurrent royalty drawn from advertising revenue generated by advertisements placed in the published articles (*id.*). Chen discloses in paragraph 28, cited by the Examiner, that when an article is accepted for publication, a unique Article ID is generated and saved in an Article Table, along with the article content, title, abstract, a designated category name, and the Author ID; Chen similarly discloses, in cited paragraphs 30 and 31, that a unique Ad ID is generated on receiving an ad submission. However, we find nothing in these paragraphs or in any of the other portions of Chen, on which the

Examiner relies, that discloses or suggests that two different instances of the same work submitted by different authors are associated with the same unique identifier, as the independent claims require.

In view of the foregoing, we do not sustain the Examiner's rejection of independent claims 43, 50, and 56 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the rejection of dependent claims 44–47, 49, 51, 52, 54, 55, 57, 58, and 60. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

DECISION

The Examiner's rejection of claims 43–47, 49–52, 54, and 55 under 35 U.S.C. § 112, first paragraph, is reversed.

The Examiner's rejection of claims 43–47, 49–52, 54–58, and 60 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejection of claims 43–47, 49–52, 54–58, and 60 under 35 U.S.C. § 103(a) is reversed.

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