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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT J. COLLINS, PAUL JOSEPH APODACA,
ADAM J. WAND, and CLAUDE JONES III¹

Appeal 2017-010537
Application 11/413,465
Technology Center 3600

Before CARLA M. KRIVAK, HUNG H. BUI, and JON M. JURGOVAN,
Administrative Patent Judges.

KRIVAK, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 32–44, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the real party in interest as Excalibur IP, LLC (*see* App. Br. 2).

STATEMENT OF THE CASE

Appellants' invention is directed to a method and an "application program interface ('API') for managing advertiser defined groups of advertisement campaign information" by receiving instructions via the API "for modifying at least a portion of the advertisement campaign information based on . . . one or more ad groups [of the advertisement campaign information]," and modifying "at least a portion of the advertisement campaign information . . . based on the received instructions" (Abstract).

Claims 32, 41, 43 are independent. Independent claim 32, reproduced below, is exemplary of the subject matter on appeal.

32. A computer-implemented method for managing advertisement campaign information using an advertisement campaign management system comprising: (i) a computer-readable storage medium storing instructions, and (ii) a processor configured to execute the instructions, the method comprising:

organizing, through execution of the instructions by the processor, advertisement campaign information into an advertising campaign;

receiving, with the processor, an advertiser-specified ad group parameter;

organizing, through execution of the instructions by the processor, the advertising campaign into a plurality of advertiser-defined ad groups, the organizing of the advertising campaign into the plurality of advertiser-defined ad groups comprising:

grouping, through execution of the instructions by the processor, a plurality of online advertisements into an advertiser-defined ad group, based on the advertiser-specified ad group parameter; and

associating, through execution of the instructions by the processor, the plurality of online advertisements of the advertiser-defined ad group with the advertiser-specified ad group parameter so that a change made to

the advertiser-specified ad group parameter will apply to a respective ad parameter of each of the plurality of online advertisements of the advertiser-defined ad group; sending, with the processor, a portion of the advertisement campaign information associated with the advertiser-defined ad group including the plurality of online advertisements and the advertiser-specified ad group parameter from an application program interface (“API”) of the advertisement campaign management system to an application running on a user device for display to an advertiser;

dynamically receiving commands from the application running on the user device via the API at the advertisement campaign management system to modify the advertiser-specified ad group parameter associated with the advertiser-defined ad group including the plurality of online advertisements; and

dynamically modifying, through execution of the instructions by the processor, the advertiser-specified ad group parameter based on the received commands, the modification of the advertiser-specified ad group parameter applying to the respective ad parameter of each of the plurality of online advertisements of the ad group.

App. Br. 27–28 (Claims Appendix).

REJECTIONS and REFERENCE

The Examiner rejected claims 32–44 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

The Examiner rejected claims 32–44 under 35 U.S.C. § 102(a) as anticipated by Kline (US 2006/0074748 A1; published Apr. 6, 2006).

ANALYSIS

Rejection of claims 32–44 under 35 U.S.C. § 101

Appellants contend the Examiner erred in finding the subject matter of claims 32–44 are patent-ineligible under 35 U.S.C. § 101 for the reasons that: (1) the Examiner overgeneralized the claims (App. Br. 15–16; Reply Br. 7); (2) the claims are not directed to organizing human activities or collecting and manipulating data (App. Br. 14–15; Reply Br. 7–8); (3) the claims are directed to an improvement in computer-related technology (App. Br. 9–10, 12, 17; Reply Br. 4, 8); and (4) the claims recite an unconventional ordered set of computer operations analogous to *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) (App. Br. 12, 14; Reply Br. 2, 6). We do not agree.

Under § 101, “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. The Supreme Court has recognized “important implicit exception[s]” to the categories of patent-eligible subject matter such as “[l]aws of nature, natural phenomena, and abstract ideas.” *Alice Corp. v. CLS Bank International*, 134 S. Ct. 2347, 2354 (2014). We follow the Supreme Court’s two-step framework in *Alice* in determining whether an invention is patent-eligible subject matter under § 101. First, we must “determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Id.* at 2355. If so, then we examine the elements of the claims “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.*

(citing *Mayo*, 566 U.S. at 78–79). In other words, the second step “search[es] 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.* (citing *Mayo*, 566 U.S. at 72–73).

Initially we note Appellants argue independent claims 41 and 43 for the same reasons as independent claim 32, thus we chose claim 32 for our analysis (*see* App. Br. 20–21).

The Examiner finds claim 32 and similarly, claims 41 and 43 are “directed toward . . . the abstract idea of organizing human activities” and “comparing new (parameters) and stored (ad groups) information an[d] using rules (commands) to identify options” by “organizing campaign information into a plurality of advertiser defined groups . . . and dynamically receiving and modifying commands based on the parameters” (Final Act. 4). The Examiner finds the claim’s abstract idea is similar to data gathering and manipulation techniques previously identified by the courts (Final Act. 4 (citing *SmartGene, Inc. v. Advanced Biological Labs., SA*, 852 F. Supp. 2d 42 (D.D.C. 2012), *aff’d* 555 F. App’x 950 (Fed. Cir. 2014)); Ans. 5 (citing *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–41 (Fed. Cir. 2016) (claims directed to generating a second menu on a computer from a first menu, and sending the second menu to another location are not patent eligible); *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (collecting information 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”); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344,

1351 (Fed. Cir. 2014) (employing mathematical algorithms to manipulate existing information)).

We agree with the Examiner that the claims are directed to grouping ads and modifying ads' characteristics ("ad parameters") based on a user's preference—an abstract idea similar to data gathering and manipulation techniques previously identified by the courts in *Ameranth*, *Electric Power Group*, *Digitech*, *Intellectual Ventures*, and *Content Extraction* (Ans. 3–5; see *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367, 1370 (Fed. Cir. 2015) (administration of financial accounts using advanced internet interface providing user display access to customized webpages, and notifying user when a spending limit is reached, is an abstract idea); and *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347–48 (Fed. Cir. 2014) (finding "[t]he concept of data collection, recognition, and storage is undisputedly well-known," and "humans have always performed these functions"))).

We also agree with the Examiner that Appellants' claims are directed to ad management, which is a fundamental business practice long prevalent in our system of commerce (Ans. 6). See *Morsa v. Facebook, Inc.*, 77 F. Supp. 3d 1007, 1013 (C.D. Cal. 2014), *aff'd*, 622 F. App'x 915 (Fed. Cir. 2015) ("[t]he concept of gathering information about one's intended market and attempting to customize the information then provided is as old as the saying, 'know your audience.'" (quoting *OpenTV, Inc. v. Netflix Inc.*, 76 F. Supp. 3d 886, 893 (N.D. Cal. 2014))). As Appellants' Specification explains, "the disclosed advertisement campaign management system provides the ability to manage advertisement campaign information at a level defined by the user. . . . allowing the user to display, manage,

optimize” or “modify the business objectives associated with an ad campaign” (*see* Spec. ¶¶ 21, 111).

Appellants’ claims are also not directed to an unconventional ordered set of computer operations analogous to *McRO*, or to an improvement in computer-related technology (*see* App. Br. 9–10, 12, 14; Reply Br. 4, 6, 8). Appellants have not demonstrated their claims recite a specific improvement to the way computers operate, and do not present evidence to establish the claims recite a specific improvement to the claimed processor or user device (Ans. 4–5; *see Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336, 1339 (Fed. Cir. 2016)). Appellants also have not demonstrated their claims “improve the way a computer stores and retrieves data in memory,” as did the claims in *Enfish* via a “self-referential table for a computer database.” *See Enfish*, 822 F.3d at 1336, 1339. For example, the only feature of claim 32 that could be considered technological is the claimed “application program interface (‘API’) of the advertisement campaign management system.” The API, however, is recited in a general, generic, and functional manner, and Appellants have not provided evidence that the API is improved to perform *functions that are not merely generic* for application program interfaces (Ans. 3–4). *See DDR Holdings, LLC, v. Hotels.com, L.P.*, 773 F.3d 1245, 1257–58 (Fed. Cir. 2014). The API recited in claim 32 is merely used for “sending . . . a portion of the advertisement campaign information” and for “dynamically receiving commands from the application running on the user device via the API.”

Additionally, Appellants’ claims and Specification do not describe *technological process improvements* similar to *McRO* (Ans. 3, 5). In contrast to Appellants’ claim, *McRO*’s claims and Specification employ

“rules that define output morph weight set stream as a function of phoneme sequence and time of said phoneme sequence” to “achieve an improved technological result.” *See McRO*, 837 F.3d at 1310, 1316. *McRO*’s improved technological result is “allowing computers to produce ‘accurate and realistic lip synchronization and facial expressions in animated characters’ that previously could only be produced by human animators.” *See McRO*, 837 F.3d at 1313. The claims in *McRO* were drawn to improvements in the operation of a computer at a task, rather than applying a computing system to perform generic transmission and manipulation of data (ad campaign information and parameters), as Appellants’ claim 32 recites. *See McRO*, 837 F.3d at 1314; *Bancorp Services, L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“the fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”).

Accordingly, we agree with the Examiner that claims 32, 41, and 43 are directed to an abstract idea.

Turning now to the second step of the *Alice* framework, Appellants allege claims 32, 41, and 43 include an “inventive concept” significantly more than an abstract idea because: (1) the claims generate “a specific data structure” linked to the user device via the API (Reply Br. 9–10; App. Br. 19), (2) the claimed components “operate in an unconventional manner to achieve an improvement in computer functionality” similar to *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) (Reply Br. 6, 10), and (3) similar to *DDR*, the claims provide “a solution necessarily

rooted in computer technology to overcome a problem specifically arising in the realm of computer networks” (App. Br. 18–20; Reply Br. 11).

We are not persuaded by Appellants’ arguments, and note claim 32 merely recites a generic API and processor (Ans. 4–6). Claim 32 does not recite an improved data structure as Appellants argue, rather, it recites generic data manipulation by the processor and API (Ans. 6–7). As the Examiner asserts, and we agree, the “processor” and the “API” are routine and conventional, merely “implement[ing] the abstract idea with high-level, generic technology executing routine functions” (Final Act. 5). Further, Appellants’ Specification and claims describe generic computing elements performing generic computing functions (Ans. 6–7; Final Act. 10; *see* Spec. ¶¶ 25–26, 35–36, 55).

Additionally, Appellants’ claims focus on the *problem* of managing advertising campaigns and customizing ads based on the advertiser’s business objectives (Ans. 6; *see* Spec. ¶¶ 21, 57, 98, 111). This is not a technical problem or one rooted in computer technology or particular only to the Internet; rather, it is a marketing problem of presenting relevant information to consumers, to increase sales. Thus, claim 32 merely “recites the performance of some business practice known from the pre-Internet world [advertisement management], along with the requirement to perform it on the internet” (Ans. 6 (citing *DDR*, 773 F.3d at 1245)). *See also Alice*, 134 S. Ct. at 2356; *Bilski v. Kappos*, 561 U.S. 593 (2010).

In fact, none of the steps and elements recited in Appellants’ claims provide, and nowhere in Appellants’ Specification can we find, any description or explanation as to how the claimed ad management steps are intended to provide a patentable invention such as: (1) a “solution . . .

necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks,” as explained by the Federal Circuit in *DDR*, 773 F.3d at 1257; (2) an “unconventional technological solution . . . to a technological problem” that “improve[s] the performance of the system itself,” as explained in *Amdocs*, 841 F.3d at 1302; or (3) “a technology-based solution . . . to filter content on the Internet that overcomes existing problems with other Internet filtering systems” and “improve[s] an existing technological process” as explained in *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016). Rather, claim 32 merely recites generic computer functions of sending and receiving data (Ans. 6) (*see Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715–16 (Fed. Cir. 2014) (“[a]dding 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 does not transform an otherwise abstract idea into patent-eligible subject matter.”)).

Further, with respect to Appellants’ preemption argument (App. Br. 12–14), we note the *McRO* court explicitly “recognized that ‘the absence of complete preemption does not demonstrate patent eligibility’” (*see McRO*, 837 F.3d at 1315 (quoting *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015))). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter” under the *Alice/Mayo* framework, “preemption concerns are fully addressed and made moot” (*Ariosa*, 788 F.3d at 1379).

We therefore agree with the Examiner’s analysis and find Appellants’ arguments insufficient to show error and sustain the Examiner’s § 101

rejection of independent claims 32, 41, and 43, and dependent claims 33–40, 42, and 44, for which no separate arguments are provided.

Rejection of claims 32–44 under 35 U.S.C. § 102(a)

Appellants contend the Examiner erred in finding Kline discloses all the limitations of independent claim 32 (App. Br. 21–52). Specifically, Appellants contend Kline does not disclose the claimed “application program interface (‘API’) of the advertisement campaign management system” from which campaign information is “sent . . . **to an application running on a user device for display to an advertiser**” recited in claim 32 (Reply Br. 14; App. Br. 22–23). Appellants also contend Kline does not disclose “dynamically receiving **commands from** the application running on the user device **via the API** at the advertisement campaign management system **to modify the advertiser-specified ad group parameter,**” where “the modification applies to the respective ad parameter of each of the plurality of online advertisements of the ad group,” as required by claim 32 (Reply Br. 15; App. Br. 23–25). We do not agree.

We agree with and adopt the Examiner’s findings as our own (Final Act. 6–7; Ans. 7–11). Initially, we note that a cited reference need not recite the claim language *ipsissimis verbis* to anticipate under § 102 (*see Kennametal, Inc. v. Ingersoll Cutting Tool Co.*, 780 F.3d 1376, 1381 (Fed. Cir. 2015) (“a reference can anticipate a claim even if it ‘d[oes] not expressly spell out’ all the limitations arranged or combined as in the claim, if a person of skill in the art, reading the reference, would ‘at once envisage’ the claimed arrangement or combination.”) (quoting *In re Petering*, 301 F.2d 676, 681 (CCPA 1962))). The Examiner’s findings persuade us that Kline

discloses the contested claim limitations. That is, the broad language of claim 32 allows a reading of Appellants' claim on Kline. For example, Appellants' claimed *API of the ad campaign management system* is commensurate with Kline's user interface engine in advertising platform 120, as Kline's "user interface engine 237 [is] configured to interact with an advertiser computer" and "receive[] inputs from the advertiser" to allow the advertiser to analyze and modify ads of an ad campaign (*see* Kline ¶¶ 34, 38, 40–41, 47, 51–54, 63, 65, Figs. 2B–2C; Ans. 8–10). Appellants' Specification provides a similar discussion of exemplary "APIs" of an ad campaign management system (*see* Spec. ¶¶ 22, 26–27, 148–149, 152, 167; Ans. 7–8).²

Kline also discloses "sending . . . a portion of the advertisement campaign information associated with the advertiser-defined ad group" from the "API[] of the advertisement campaign management system to an application running on a user device for display to an advertiser," as recited in claim 32 (Ans. 9–10). Specifically, Kline discloses "[t]he proposed marketing campaign [(set up by advertiser/user on ad platform 120)] *is presented to the advertiser . . . and can be reviewed and adjusted as desired*

² Appellants' Specification does not provide an explicit and exclusive definition of the claimed "application program interface ('API')," rather, it broadly describes "a pod 100 [(a plurality of software components and data for management of ad campaigns)] exposes one or more APIs 110 and UIs 115," the "user and application program interfaces . . . [being] used to facilitate management and optimization of ad campaigns" (*see* Spec. ¶¶ 22, 26–27). "For example, advertisers use these interfaces to access ad campaign information and ad campaign performance information . . . search the information, analyze the information. . . [and] change listings or bidding strategies using these interfaces" (*see* Spec. ¶ 27).

before proceeding with the campaign” (*see* Kline ¶ 63 (emphasis added); Ans. 9–10). For example, “[if] the original budget estimate is insufficient, the advertiser is provided with a message through user interface engine 237 recommending that the budget amount be increased” (Kline ¶ 63).

Additionally, ad campaign results are reported to the advertiser (*see* Kline ¶¶ 80, 95, 97–99, Fig. 2B; Ans. 8–9). Thus, Kline teaches the claimed API (user interface engine 237) sends a portion of the ad campaign information for display to the advertiser “through a user interface displayed on the advertiser’s computer, [by which] the advertiser interacts with user interface engine 237” (*see* Kline ¶ 51).

We also agree with the Examiner that Kline discloses “dynamically receiving commands from the application running on the user device via the API at the advertisement campaign management system to modify the advertiser-specified ad group parameter” as claimed (Ans. 8–10 (citing Kline ¶¶ 36, 40–41, 54, 63, 71, 75, 81–82, Figs. 1 and 2B–2C)). Specifically, Kline’s advertisement campaign management (ad platform 120) receives, via the API (user interface engine 237), commands from an application running on the user device (advertiser’s computer 110) to modify an advertiser-specified ad group parameter—e.g., to increase a budget determined to be insufficient for the ad campaign (*see* Kline ¶ 63) or to select publishers that optimize the campaign allocation (*see* Kline ¶¶ 75, 82) (Ans. 9–10). Additionally, Kline discloses “all advertisements in a given category (group) are modified for duration [of the ad campaign] based on cost optimization, which . . . may be updated at any time” by the user (Ans. 11 (citing Kline ¶¶ 54, 63, 81–83)). Thus, Kline teaches the modification of

an ad group parameter (e.g., campaign budget or set of publishers) applies to all ads in the ad group/campaign, as required by claim 32 (Ans. 11).

Thus, for the above reasons, we sustain the Examiner's anticipation rejection of independent claim 32, independent claims 41 and 43 argued for substantially the same reasons (App. Br. 25–26), and dependent claims 33–40, 42, and 44, argued for their dependency on claims 32, 41, and 43 (App. Br. 25–26).

DECISION

The Examiner's decision rejecting claims 32–44 under 35 U.S.C. § 101 is affirmed.

The Examiner's decision rejecting claims 32–44 under 35 U.S.C. § 102(a) 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)(1)(iv).

AFFIRMED