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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID BROPHY, CHRISTIAN SEIFERT,
DAVID CARMER, JASON FIGGE,
HAROLD LEE and JENNIFER BALDWIN

Appeal 2017-010892
Application 11/555,853
Technology Center 3600

Before CARL W. WHITEHEAD JR., ADAM J. PYONIN and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants are appealing the final rejection of claims 1–3, 6, 8, 9 and 12–18 under 35 U.S.C. § 134(a). Appeal Brief 2. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Introduction

The invention is directed to:

[T]echniques for managing relationships during communications occurring with marketing activities are presented. According to an embodiment, a method for managing relationships during a communication of a marketing campaign is taught. Contacts associated with a target are expanded for a communication of a

marketing campaign in response to contact rules. The communication is managed during the marketing campaign with respect to the target and the contacts using treatment rules.
Specification ¶ 8.

Illustrative Claim

1. A machine-implemented method implemented in a non-transitory machine-readable medium and for executing on a machine, comprising:

expanding, by the machine, contacts associated with a target for a communication of a marketing campaign based on contact rules, the contact rules are enforced to expand the contacts for use with the target in the marketing campaign and the target is an entity to which the marketing campaign is being directed, the communication is a message, advertisement, sales pitch, or offer that is being directed to the target for the marketing campaign over multiple different communication channels, the communication channels include instant messaging, World-Wide Web (WWW), email, phone, and on-demand television, and the contacts are entities that are related to the target;

managing, by the machine, the communication during the marketing campaign via treatment rules, the communication is managed using the treatment rules when the target is contacted via the contacts and the treatment rules are customized for the target, the treatment rules drive how and to whom the communication and any secondary communications are processed, and wherein at least one treatment rule indicates that some of the expanded contacts are to be communicated with in an identical manner to that which is used for the target when these particular contacts are directly related to the target and the at least one treatment rule also indicates that other of the expanded contacts are to be communicated with in an independent manner from that which is used with the target when these other contacts are indirectly related to the target and identifying particular contacts as being indirectly related to the

target when those particular contacts are members of a same household as the target; and
suppressing or excluding, by the machine, a number of the contacts that were expanded in response to suppression rules.

Rejections on Appeal

Claims 1–3, 6, 8, 9 and 12–18 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to nonstatutory subject matter. Final Action 7–12.

Claims 8, 9 and 12–18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Winner (US Patent Application Publication 2005/0278443 A1; published December 15, 2005), Hansen (US Patent Application Publication 2008/0059283 A1; published March 6, 2008), Kurtzman II (US Patent 6,144,944; issued November 7, 2000), Kublickis (US Patent Application Publication 2007/0067297 A1; published March 22, 2007) and Kim (US Patent Application Publication 2008/0262925 A1; published October 23, 2008). Final Action 12–21.

Claims 1–3, 6, 8, 9 and 12–18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Teague (US Patent Application Publication 2006/0212355 A1; published September 21, 2006), Hansen, Kurtzman II, Kublickis and Gaito (US Patent Application Publication 2003/0171942 A1; published September 11, 2003). Final Action 21-40.

Claims 8, 9 and 12–18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Teague, Winner, Hansen, Kurtzman II, Kublickis and Kim. Final Action 41–53.

ANALYSIS

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed February 21, 2017), the Final Action (mailed July 20, 2016) and the Answer (mailed May 22, 2017) for the respective details.

35 U.S.C. §101 rejection

The Examiner determines the claims are patent ineligible under 35 U.S.C. § 101 because the claims are directed to an abstract idea comprising a fundamental economic practice or organizing human activity, and do not include additional elements that are sufficient to amount to significantly more than the abstract idea. Final Action 8–12; *see also Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (Describing the two-step framework “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.”).

After the mailing of the Answer and the filing of the Brief in this case, the USPTO published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “Memorandum”). Under the Memorandum, the Office first looks to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that are not “well-understood, routine, conventional” in the field (see MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Memorandum.

We are not persuaded the Examiner’s rejection is in error. We adopt the Examiner’s findings and conclusions as our own, and we add the following primarily for emphasis and clarification with respect to the Memorandum.

Appellants argue the pending claims are not directed to an abstract idea without reciting significantly more because:

[T]he Examiner has not provided significant evidence to support the ineligibility rejection and therefore has not properly shifted the burden to the Applicant to prove the claims are in fact eligible. Secondly, the claims do include unconventional processing steps, some of which are recited above, and unconventional processing steps are an exception to ineligibility and are evidence of “significantly more” under the PTO’s own rules.

Appeal Brief 10.

We agree with the Examiner’s determination that the claims are directed to an abstract idea. *See* Final Action 7–12. The Specification discloses:

The relationship management service 302 interacts with the data store 301 and services that process a marketing activity. The relationship management service 302 queries the data store 301

to acquire primary targets for a given communication of a given marketing activity. Next, contact rules are acquired and used to expand the contacts for the communication. The relationship management service 302 then acquires treatment rules for the communication and marketing activity. The treatment rules are then used to drive the processing of the communication to the target and to the expanded contacts.

Specification ¶ 54.

The concept of marketing, as recited by the claims, is a fundamental business practice long prevalent in our system of commerce. The use of marketing is also a building block of ingenuity in attempting to stimulate sales. Thus, a CRM (customer-relationship management) system is an example of a conceptual idea subject to the Supreme Court’s “concern that patent law not inhibit further discovery by improperly tying up the future use of these building blocks of human ingenuity.” *Alice*, 573 U.S. at 216 (citations omitted). Claim 1 recites:

[A] target for a communication of a marketing campaign based on contact rules, the contact rules are enforced to expand the contacts for use with the target in the marketing campaign and the target is an entity to which the marketing campaign is being directed, the communication is a message, advertisement, sales pitch, or offer that is being directed to the target for the marketing campaign over multiple different communication channels, the communication channels include instant messaging, World-Wide Web (WWW), email, phone, and on-demand television, and the contacts are entities that are related to the target.

These steps comprise fundamental economic principles or practices and/or commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); thus the claim recites the abstract idea of “[c]ertain methods of organizing human activity.” Memorandum, Section I

(Groupings of Abstract Ideas); *see* Specification ¶ 1. Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (claims merely reciting abstract idea of using advertising as currency as applied to particular technological environment of the Internet not patent eligible); *see also* Memorandum fn. 13.

Appellants argue, “The claims are directed to treatment of contacts based on customization over multiple communication channels and the claims include treating a contact the same and another contacted to which the other contact is related. This is not conventional and the Examiner has provided no evidence only option that such is conventional.” Appeal Brief 10. We do not find Appellants’ argument persuasive because claim 1 appear to be merely using a conventional “processing device” to manage communications over the multiple communication channels as a tool to provide the targeted customer with targeted advertisements, sales pitches, etc. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016). (“[W]e find it relevant to ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea . . . the focus of the claims is on the specific asserted improvement in computer capabilities (i.e., the self-referential table for a computer database) or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.”); *see also* Memorandum, 84 Fed. Reg. at 55. The claims do not recite an additional element or elements that reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field. *See* Final Action 10 (“These additional elements are not sufficient to amount to significantly more than

the judicial exception because they do not recite, for example: an improvement to another technology or technical field”); *Alice*, 573 U.S. at 222 (“In holding that the process was patent ineligible, we rejected the argument that ‘implement[ing] a principle in some specific fashion’ will ‘automatically fal[l] within the patentable subject matter of § 101.’”) (quoting *Parker v. Flook*, 437 U.S. 584, 593(1978)).

Accordingly, we determine the claim does not integrate the judicial exception into a practical application. See Memorandum, Section III(A)(2) (Prong Two: If the Claim Recites a Judicial Exception, Evaluate Whether the Judicial Exception Is Integrated Into a Practical Application). Nor do we find the claim includes a specific limitation or a combination of elements that amounts to significantly more than the judicial exception itself. See Memorandum, Section III(B)(Step 2B: If the Claim Is Directed to a Judicial Exception, Evaluate Whether the Claim Provides an Inventive Concept); see also *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 890 F.3d 1354, 1359 (Fed. Cir. 2018) (“the ‘inventive concept’ cannot be the abstract idea itself”). Other than the abstract idea itself, the remaining claim elements only recite generic computer components that are well-understood, routine, and conventional. See Final Action 10–12; *Alice*, 573 U.S. at 226; Specification ¶¶ 2, 12–13, 21, 39, 44, 47–49.

Accordingly, we agree with the Examiner that claims 1–3, 6, 8, 9 and 12–18, not argued separately, are not patent eligible. See Appeal Brief 10.

35 U.S.C. §103 rejections

Appellants contend:

The Office has not established a *prima facie* case of obviousness because these requirements have not been satisfied. Regarding independent claims 1 and 8, each claim recites the limitation “suppressing or excluding, by the machine, a number of the contacts that were expanded in response to suppression rules”. Independent claim 15, similarly recites the limitation “to suppress or exclude a number of the contacts that were expanded in response to suppression rules.” It is not seen that the cited references, teach or suggest this limitation.

Appeal Brief 11.

Appellants state that support for the “suppressing or excluding, by the machine, a number of the contacts that were expanded in response to suppression rules” claim limitation is provided by paragraph 36 of the Specification and Figure 1 step 130 for claims 1, 8, and paragraphs 30–46, 55 and Figures 1, 2 for the *similarly recited* limitation in claim 15. Appeal Brief 4–7.

The Specification discloses:

If a targeted individual cannot be delivered the primary offer (due to optimization rules, suppression rules, *etc.*) then secondary information packets must not be sent to any related entities. Specification ¶ 26.

[T]he relationship management service may actually be used to suppress some contacts that were previously expanded in response to suppression rules. For example, a particular target may forbid that a particular contact be communicated with. In such a situation, suppression rules may be used to override normal processing and ensure that such contacts are not communicated with. Specification ¶ 36.

Next, the contacts may be filtered or suppressed out using suppression rules, optimization rules, or if identified as being part of a control group. Specification ¶ 37.

Appellants argue that neither Kim nor Gaita disclose “that contacts were expanded are suppressed in response to suppression rules.” Appeal Brief 11–12.

The Examiner finds that Kim discloses:

Offer data stores also in communication with the communications network store offers from merchants. A narrowcasting engine includes an active data *gathering module to collect the user data, and an active learning module to generate a user profile based on the user data.* The communication engine selects dynamically offers from the offer data store based on the profile, and communicates the selected offers in the offer data store to the users. The invention of Kim is directed to gathering and collecting data.

Answer 12 (*citing* Kim ¶¶ 25, 26 and 110).

The Examiner finds that Gaito discloses:

Gaito discloses adding a plurality of contacts to databases but also either excluding them initially based on a suppress list or putting them in a database and then flagging those that are on a suppression list. The contact database (the expanded list) can generate a target list (which exclude those from the suppression list).

Answer 15 (*citing* Gaito ¶¶ 39–41, 44 and 45).

We agree with the Examiner’s findings. “As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). We find the disputed limitations are directed to filtering contacts which is the essence of targeted marketing and this is clearly supported by Appellants’ own Specification. *See* Appeal Brief 4–7. Accordingly, once the Examiner has satisfied the burden of presenting a prima facie case of

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obviousness, the burden then shifts to Appellants to present evidence and/or arguments that persuasively challenge the Examiner's prima facie case. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Subsequently, Appellants did not particularly point out errors in the Examiner's reasoning to persuasively rebut the Examiner's prima facie case of obviousness, therefore the rejections are sustained.

DECISION

The Examiner's nonstatutory subject matter rejection of claims 1–3, 6, 8, 9, and 12–18 is affirmed.

The Examiner's obviousness rejections of claims 1–3, 6, 8, 9, and 12–18 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). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED