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IP.Inbox@Nuance.com
patentgroup@polsinelli.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN HART LEWIS and JOHN BALDASARE¹

Appeal 2018-000271
Application 14/337,332
Technology Center 2600

Before JOSEPH L. DIXON, CATHERINE SHIANG, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–20, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Introduction

¹ Appellants identify Nuance Communications, Inc. as the real party in interest. App. Br. 3.

According to the Specification, the present invention relates to auditory verification of a human user. *See generally* Spec. 1. Claim 1 is exemplary:

1. A method comprising:
 - selecting, via a processor of a computing device, text comprising a non-word which, when pronounced by a text-to-speech process, will produce a single-word-like audible pronunciation of the non-word, wherein the non-word does not exist within natural languages and is not located in a grammar;
 - transmitting, via the processor, the text over a network to a user device, wherein the user device is capable of executing the text-to-speech process to produce an audible challenge requesting the user to spell the non-word;
 - receiving, from the user device and over the network, an audible response to the audible challenge;
 - verifying, via the processor, an identity of the user based on the audible response; and
 - transmitting, via the processor and over the network, a confirmation of the identity of the user based on the audible response.

Rejection

Claims 1–20 are rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

ANALYSIS

We disagree with Appellants’ arguments, and agree with and adopt the Examiner’s findings and conclusions in (i) the action from which this

appeal is taken (Final Act. 3–4) and (ii) the Answer (Ans. 2–9) to the extent they are consistent with our analysis below.²

The Examiner rejects the claims under 35 U.S.C. § 101 because they are directed to patent-ineligible subject matter. *See* Final Act. 3–4; Ans. 2–9. In particular, the Examiner concludes the claims are directed to the abstract idea of selecting, transmitting, and verifying information. *See* Ans. 2–5. The Examiner determines the claims do not identify an inventive concept to transform the nature of the claims into a patent-eligible application. *See* Ans. 2–9. Appellants argue the Examiner erred. *See* App. Br. 7–17; Reply Br. 3–7.

Appellants have not persuaded us of error. Section 101 of the Patent Act provides “[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. That provision “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). According to the Supreme Court:

[W]e set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . If so, we then ask,

² To the extent Appellants advance new arguments in the Reply Brief without showing good cause, Appellants have waived such arguments. *See* 37 C.F.R. § 41.41(b)(2).

“[w]hat else is there in the claims before us?” . . . To answer that question, 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. . . . We have described step two of this analysis as a 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.”

Alice Corp., 134 S. Ct. at 2355.

The Federal Circuit has described the *Alice* step-one inquiry as looking at the “focus” of the claims, their “character as a whole,” and the *Alice* step-two inquiry as looking more precisely at what the claim elements add—whether they identify an “inventive concept” in the application of the ineligible matter to which the claim is directed. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Regarding *Alice* step one, the Federal Circuit has “treated *collecting information*, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.” *Elec. Power*, 830 F.3d at 1353 (emphasis added); *see also Internet Patents*, 790 F.3d at 1348–49; *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). “In a similar vein, we have treated *analyzing information* [including manipulating information] by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the

abstract-idea category.” *Elec. Power*, 830 F.3d at 1354 (emphasis added); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016).

The rejected claims “fall into a familiar class of claims ‘directed to’ a patent-ineligible concept.” *Elec. Power*, 830 F.3d at 1353. Contrary to Appellants’ arguments (App. Br. 7–17; Reply Br. 3–7), the claims are similar to the claims of *Electric Power*, and are focused on the combination of abstract-idea processes or functions. *See Elec. Power*, 830 F.3d at 1354; *see also Content Extraction*, 776 F.3d at 1347. For example, claim 1 is directed to collecting (including transmitting) and analyzing information (“selecting . . .”; “transmitting . . .”; “receiving . . .”; “verifying . . .”). Independent claim 8 is a system claim reciting similar functions. Independent claim 15 is similarly directed to collecting (including transmitting) and analyzing information (“selecting . . .”; “transmitting . . .”; “receiving . . .”; “verifying . . .”). *See Elec. Power*, 830 F.3d at 1353; *see also Content Extraction*, 776 F.3d at 1347. The dependent claims are directed to similar functions or processes, and Appellants have not shown such claims are directed to other non-abstract functions or processes. *See* claims 2–7, 9–14, and 16–20.

Appellants’ assertion regarding pre-emption (App. Br. 16–17) is unpersuasive, because “[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015);

see also OIP, 788 F.3d at 1362–63 (“that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract”).

Regarding *Alice* step two, contrary to Appellants’ assertion (App. Br. 10–17; Reply Br. 3–7), Appellants have not shown the claims in this case require an arguably inventive set of components or methods, or invoke any assertedly inventive programming. *See Elec. Power*, 830 F.3d at 1355.

Further, contrary to Appellants’ arguments (App. Br. 10–17; Reply Br. 3–7), the claims are similar to the claims of *Electric Power*, because they do not require any nonconventional computer, network, or user device components, or even a “non-conventional and non-generic arrangement of known, conventional pieces,” but merely call for performance of the claimed information collection and analysis functions on generic computer, network, and user device components. *See Elec. Power*, 830 F.3d at 1355; *see also Content Extraction*, 776 F.3d at 1348. For example, claim 1 recites “selecting, via a processor of a computing device, . . .; transmitting, via the processor, . . . wherein the user device is capable of executing the text-to-speech process to produce . . .; receiving, from the user device and over the network, . . .; verifying, via the processor, . . .; and transmitting, via the processor and over the network, . . .” Claims 8 and 15 recite similar functions or processes. The dependent claims call for similar generic components and devices, and Appellants have not shown such claims require any non-conventional components or devices. *See* claims 2–7, 9–14, and 16–20.

Similar to the claims of *Electric Power*, the rejected claims specify what information is desirable to gather and analyze, but they “do not include

any requirement for performing the claimed functions of gathering, analyzing . . . by use of anything but entirely conventional, generic technology.” *Elec. Power*, 830 F.3d at 1355. Therefore, similar to the claims of *Electric Power*, the rejected claims “do not state an arguably inventive concept in the realm of application of the information-based abstract ideas.” *Elec. Power*, 830 F.3d at 1356.

Appellants cite paragraphs and figures of the Specification (App. Br. 12–14; Reply Br. 3–4), and argue they “provide the solution and the innovation” by “the use of text that covers a non-word.” App. Br. 13.

Appellants’ arguments are unpersuasive. Consistent with the Specification, the claims recite selecting certain known information (such as text comprising a non-word) for processing. However, Appellants have not shown selecting different information content for processing renders the claims patent eligible under *Alice*.

Contrary to Appellants’ assertion (App. Br. 11–14), the rejected claims are unlike the claims in *Enfish*. In *Enfish*, the court determines:

The . . . patents are directed to an innovative logical model for a computer database. . . . A logical model generally results in the creation of particular tables of data, but it does not describe how the bits and bytes of those tables are arranged in physical memory devices. Contrary to conventional logical models, the patented logical model includes all data entities in a single table, with column definitions provided by rows in that same table. The patents describe this as the “self-referential” property of the database.

Enfish, 822 F.3d at 1330.

[T]he plain focus of the claims is on an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.

[T]he claims . . . are directed to a specific improvement to the

way computers operate, embodied in the self-referential table.
Enfish, 822 F.3d at 1336.

The rejected claims are unlike the claims of *Enfish* because they are not “an improvement to computer functionality itself.” *Enfish*, 822 F.3d at 1336. Instead, they are similar to the claims of *Electric Power*, because “the focus of the claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *Elec. Power*, 830 F.3d at 1354.

Further, contrary to Appellants’ assertion (App. Br. 11–14), the rejected claims are unlike the claims in *Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288 (2016). In *Amdocs*, the court finds:

claim 1 of the ’065 patent is tied to a specific structure of various components (network devices, gatherers, ISMs, a central event manager, a central database, a user interface server, and terminals or clients). It is narrowly drawn to not preempt any and all generic enhancement of data in a similar system, and does not merely combine the components in a generic manner, but instead purposefully *arranges the components in a distributed architecture to achieve a technological solution to a technological problem specific to computer networks.*

. . . claim 1 of the ’065 patent depends upon a specific enhancing limitation that *necessarily incorporates the invention’s distributed architecture—an architecture providing a technological solution to a technological problem.* This provides the requisite ‘something more’ than the performance of “well-understood, routine, [and] conventional activities previously known to the industry.”

Amdocs, 841 F.3d at 1301 (emphases added).

The rejected claims are unlike the claims of *Amdocs* because they do not “necessarily incorporate[] the invention’s distributed architecture—an

architecture providing a technological solution to a technological problem.” *Amdocs*, 841 F.3d at 1301. As discussed above, the recited claims merely select different information content for processing.

Finally, Appellants cite *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) (App. Br. 10–14), but do not persuasively explain why that case is similar to the present case. As discussed above, the rejected claims are similar to the claims of *Electric Power*, and they do not “require an arguably inventive distribution of functionality within a network, thus distinguishing the claims at issue from those in *Bascom*.” *Elec. Power*, 830 F.3d at 1355; *see also Bascom Global Internet Services*, 827 F.3d at 1350 (construed in favor of the nonmovant at pleading stage, finding a sufficient inventive concept in “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user”). Similar to the claims of *Electric Power*, the rejected claims specify what information is desirable to analyze and gather, but they “do not include any requirement for performing the claimed functions of gathering, analyzing, . . . by use of anything but entirely conventional, generic technology.” *Elec. Power*, 830 F.3d at 1356. Therefore, similar to the claims of *Electric Power*, the rejected claims “do not state an arguably inventive concept in the realm of application of the information-based abstract ideas.” *Elec. Power*, 830 F.3d at 1356.

In short, Appellants have not shown the claims, read in light of the Specification, require anything other than conventional computer and network technology for collecting and analyzing the desired information. *See Elec. Power*, 830 F.3d at 1354. Such invocations of computers and

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networks are “insufficient to pass the test of an inventive concept in the application” of an abstract idea. *See Elec. Power*, 830 F.3d at 1355.

Because Appellants have not persuaded us the Examiner erred, we sustain the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner’s decision rejecting claims 1–20.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED