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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YUICHIRO TAKEMOTO, KUNIO HIRAKAWA, YOSHINOBU
UNO, and YUICHI NAKAHATA

Appeal 2018-000322
Application 14/284,580
Technology Center 3600

Before BIBHU R. MOHANTY, TARA L. HUTCHINGS, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134(a) of the final rejection of claims 2, 4–13, and 16–18 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

THE INVENTION

The Appellants' claimed invention is directed to a system and method for customer category analysis of customers visiting a commercial establishment (Spec., page 1 lines 5–7). Claim 18, reproduced below, is representative of the subject matter on appeal.

18. An analysis method comprising:
 - receiving, via a receiver, images of persons captured by a camera pointed in a predetermined direction;
 - detecting, via a detector, a front face of each of the persons in the received images, and further detecting, via the detector, a moving direction of each of the detected front face;
 - storing, in a storage medium, information of the predetermined direction including information of a predetermined movement path corresponding to the predetermined direction and towards the camera;
 - obtaining, via a filter, a movement path for each of the detected front faces;
 - selecting, via the filter, from among the persons whose front face has been detected, one or more persons whose face moves in a path matching the predetermined movement path; and
 - categorizing, in a categorizer, the persons whose front face has been detected, wherein persons other than the selected persons are excluded from a target of the categorizing.

THE REJECTION

The following rejection is before us for review¹:

Claims 2, 4–13, and 16–18 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

¹ The rejections under 35 USC § 103 are considered withdrawn in light of the statement at page 2 of the Advisory Action mailed Feb. 23, 2017, at page 2.

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence.²

ANALYSIS

The Appellants argue that the rejection of claim 18 is improper because the claim is not directed to an abstract idea (App. Br. 32, Reply Br. 13–15). The Appellants also argue that the claim recites additional limitations amounting to “significantly more” than the alleged abstract idea such that they are sufficient to transform the patent-ineligible abstract idea into a patent-eligible invention (App. Br. 32–38, Reply Br. 15–17).

In contrast, the Examiner has determined that the rejection of record is proper (Final Rej. 6–8, Ans. 2–5).

We agree with the Examiner. 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. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In judging whether claim 18 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–79 (2012)).

² *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. If so, we then consider the elements of the 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 of the abstract idea. *Id.* This is a search for an “inventive concept,” i.e., an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.* The Court also stated that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Id.* at 2358.

Here, we determine that the claim is directed to the concept of collecting and classifying information of images, and analyzing and displaying certain results from the analysis. The Examiner determined that the claims are similar to claims involving collecting and processing data that the Federal Circuit has held to be abstract (Ans. 2–3), and we agree. Courts have found claims directed to collecting, recognizing, analyzing, and storing data to be directed to an abstract idea, even when computers and other hardware is required for implementation. *Content Extraction and Transmission LLC v. Wells Fargo Bank, National Association*, 776 F.3d 1343 (Fed. Cir. 2014); *see also Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) where collecting information, analyzing it, and displaying results from certain results of the collection and analysis was held to be an abstract idea. *See also In re TLI Comm. LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016) (in which “classifying and storing digital images in an organized manner” was held to be an abstract concept

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea over the using generic computer components. We conclude that it does not. The Specification at page 13 for instance describes the use conventional computer components and networks used in a conventional manner for their known purposes.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional both individually and as an ordered combination. Each step of the claimed method does no more than require a generic computer to perform a generic computer function. Unlike Appellants' cited examples of claims held to be patent eligible by the Federal Circuit Appellants (*see, e.g.,* App. Br. 31–32), here, claim 18 is not directed to an improvement in technology, nor does it recite an ordered combination of elements that results in an innovative concept. At best, claim 18 requires applying the abstract idea of receiving, storing, and processing data to a particular technological environment, which is not enough for patent eligibility.

For these above reasons, the rejection of claim 18 is sustained.

Claims 16 and 17 are directed to similar subject matter, but in the form of device and system claims, respectively. The Appellants have provided similar arguments for these claims as provided with respect to claim 18.. Here, as in *Alice*, “the system claims are no different in substance from the method claims. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of

generic computer components configured to implement the same idea.” *Alice* 134 S. Ct. at 2351. “[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea ‘while adding the words ‘apply it’ is not enough for patent eligibility.” *Id.* at 2358 (quoting *Mayo*, 566 U.S. at 71–73). Therefore, we sustain the rejection of independent claims 16 and 17, for the same reasons described above with respect to claim 18. We also sustain the rejection of claims 2 and 4–13, which depend from claim 16 and are not argued separately.

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 2, 4–13, and 16–18 under 35 U.S.C. § 101.

DECISION

The Examiner’s rejection of claims 2, 4–13, and 16–18 is sustained.

AFFIRMED