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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SVEN GRAUPNER, HAMID REZA MOTAHARI NEZHAD, and
CLAUDIO BARTOLINI

Appeal 2018-000565
Application 13/415,803¹
Technology Center 3600

Before MICHAEL C. ASTORINO, KENNETH G. SCHOPFER, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ The Appellants identify Hewlett Packard Enterprise Development LP as the real party in interest. Appeal Br. 3.

ILLUSTRATIVE CLAIM

1. A system comprising:
 - one or more processors; and
 - memory that stores computer-executable instructions that control the one or more processors to provide a sales governance system to:
 - receive requests from sales personnel with the sales governance system;
 - interpret the requests from the sales personnel with the sales governance system and provide interpretations of the requests in the context of a sales process with the sales governance system; and
 - provide responses to the sales personnel with the sales governance system based on the interpretations of the requests.

CITED REFERENCES

The Examiner relies upon the following references:

| | | |
|---|--------------------|----------------|
| Johnson et al. (hereinafter "Johnson") | US 6,067,525 | May 23, 2000 |
| Park | US 2006/0168072 A1 | July 27, 2006 |
| Wulteputte et al. (hereinafter "Wulteputte") | US 2006/0287932 A1 | Dec. 21, 2006 |
| Campbell | US 2008/0066080 A1 | Mar. 13, 2008 |
| Waithman Lanyon et al. (hereinafter "Waithman Lanyon") | US 2011/0225092 A1 | Sept. 15, 2011 |

REJECTIONS

- I. Claims 1–20 are rejected under 35 U.S.C. § 101 as ineligible subject matter.
- II. Claims 1, 3–5, 7, 10, 16, and 17 are rejected under 35 U.S.C. § 102(b) as anticipated by Wulteputte.

III. Claims 2, 6, 8, 9, and 13–15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Wulteputte and Johnson.

IV. Claims 11 and 12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Wulteputte and Campbell.

V. Claims 18 and 19 are rejected under 35 U.S.C. § 103(a) as unpatentable over Wulteputte, Johnson, Official Notice, and Park.

VI. Claim 20 is rejected under 35 U.S.C. § 103(a) as unpatentable over Wulteputte, Johnson, Official Notice, Park, and Waithman Lanyon.

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

ANALYSIS

Subject-Matter Eligibility

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. Yet, subject matter belonging to any of the statutory categories may, nevertheless, be ineligible for patenting. The Supreme Court has interpreted § 101 to exclude laws of nature, natural phenomena, and abstract ideas, because they are regarded as the basic tools of scientific and technological work, such that including them within the domain of patent protection would risk inhibiting future innovation premised upon them. *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013).

Of course, “[a]t some level, ‘all inventions . . . embody, use, reflect, rest upon, or apply’” these basic tools of scientific and technological work. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (internal citation

omitted). Accordingly, evaluating ineligible subject matter, under this judicial exclusion, involves a two-step framework for “distinguish[ing] between patents that claim the buildin[g] block[s] of human ingenuity and those that integrate the building blocks into something more, thereby transform[ing] them into a patent-eligible invention.” *Id.* (internal quotation marks and citation omitted). The first step determines whether the claim is directed to judicially excluded subject matter (such as a so-called “abstract idea”); the second step determines whether there are any “additional elements” recited in the claim that (either individually or as an “ordered combination”) amount to “significantly more” than the identified judicially excepted subject matter itself. *Id.* at 217–18.

The USPTO recently published revised guidance on the application of § 101, in accordance with judicial precedent. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 52 (Jan. 7, 2019) (“*2019 Revised Guidance*”). Under the *2019 Revised Guidance*, a claim is “directed to” an abstract idea, only if the claim recites any of (1) mathematical concepts, (2) certain methods of organizing human activity, and (3) mental processes — without integrating such abstract idea into a “practical application,” i.e., without “apply[ing], rely[ing] on, or us[ing] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *Id.* at 53–55. A claim so “directed to” an abstract idea constitutes ineligible subject matter, unless it recites an additional element (or combination of elements) amounting to significantly more than the abstract idea. *Id.* at 56.

With regard to the first step of the *Alice* framework, the Examiner states that claims 1–20 are directed to the abstract idea of “collaborating and coordinating services provided by sales professionals,” which the Examiner regards as a “fundamental business practice” and an ineligible “method of organizing human activity by providing a system that allows collaboration of sales personnel to participate in a sales process.” Final Action 2. The Examiner further states that “[t]he claimed invention is related to comparing new (the information received from the user in the request) and stored information (responding the request with stored information such as the form claimed) to identify an option (performing transactions based on the information received in the form[]),” which the Examiner regards as similar to the abstract idea identified in *SmartGene, Inc. v. Advanced Biological Laboratories, SA*, 555 F. App’x 950, 955 (Fed. Cir. 2014) (non-precedential). *Id.* Viewed through the lens of the *2019 Revised Guidance*, 84 Fed. Reg. at 52, the Examiner’s analysis depicts the claimed subject matter as one of the ineligible “[c]ertain methods of organizing human activity” that include “commercial . . . interactions,” such as “advertising, marketing or sales activities or behaviors” and “business relations,” as well as “managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions).”

Addressing the second step of the *Alice* framework, the Examiner states:

The claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional element(s) or combination of elements in the claim(s) other than the abstract idea per se

amount(s) to no more than: (i) mere instructions to implement the idea on a computer, and/or (ii) recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry which has been treated by the courts as an attempt to link the abstract idea to a particular technological environment, *Alice Corp. Pty.Ltd. v. CLS Bank Int'l* (i.e. receive information, store information, and display information based on rules.).

Final Action 2–3.

The Appellants argue that “[i]ndependent claims 1, 10, an[d] 18 comprise concrete features that are more than an abstract idea and, thus, are not directed to” a judicially excepted category of subject matter. Appeal Br. 9.

Yet, the Appellants do not contest the accuracy of the Examiner’s characterization of the claims as “collaborating and coordinating services provided by sales professionals” (*see* Final Action 2), nor do the Appellants dispute that the Examiner’s characterization describes an abstract idea.

Rather, the Appellants argue that, “when viewed as a whole, independent claims 1, 10, and 18 clearly do not seek to tie up the abstract idea of collaboration and coordination of services provided by sales professionals so that others cannot practice it.” Appeal Br. 11. In short, the Appellants’ argument, regarding the first part of the *Alice* framework, amounts to a contention that the independent claims do not preempt the abstract idea that the Examiner identifies. The Appellants’ argument on this point does not identify reversible error. “While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

Further, the Appellants do not identify any basis for error in the Examiner’s analysis, whereby any of the independent claims might integrate the identified abstract idea into a “practical application,” per Step 2A, prong two, of the *2019 Revised Guidance*, 84 Fed. Reg. at 54–55. According to the Appellants, independent claims 1, 10, and 18 delineate “significant concrete features” that “provide meaningful improvements in the technical field.” Appeal Br. 10. The Appellants’ example refers to page 3, lines 1–4, of the Specification, wherein “sales governance system 22 employs these concrete features of independent claims 1, 10, and 18 to mitigates interactions between personnel, such as sales or other personnel, and the different sales management systems 24, such as customer relationship management systems, budgeting systems, and approval systems.” *Id.* at 10–11. Yet, according to the portion of the Specification that the Appellants cite, the improvements alleged are attributable to “an email access layer” (Spec. 3, ll. 1–4) — a feature that is not recited in any of claims 1, 10, and 18. As such, the Appellants do not identify a claimed feature that might integrate the identified abstract idea into a “practical application” thereof. *See 2019 Revised Guidance*, 84 Fed. Reg. at 54–55 (“Examiners evaluate integration into a practical application by: (a) Identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.”)

Nor do the Appellants show error, on the Examiner’s part, in applying the second step of the *Alice* framework (“Step 2B” of the *2019 Revised Guidance*, 84 Fed. Reg. at 56–57). The Appellants contend:

significant concrete features of independent claims 1, 10, and 18 are specific features other than what is well understood, routine, and conventional in the technical field of the invention and are meaningful features beyond generally linking the use of the judicial exception to a particular technological environment, such that these specific features amount to significantly more than the judicial exception itself.

Appeal Br. 13. In particular, the Appellants state:

these specific significantly more concrete features of independent claims 1, 10, and 18 can provide several advantages that were not possible prior to the present invention, such as shield sales personnel from the complexities and changes in the underlying sales management systems; simplify interactions with the sales management systems into email communication mechanisms people are familiar with; provide sales personnel who travel frequently and rely on mobile computing devices easy access; simplifies locating information for a step or action to be performed in a sales process by including instructions and/or templates in response emails; reduces roll-out time for sales process changes; create a unified recording point for ongoing sales activities and build a warehouse of information that can be exploited for further analysis, and record information in a string of emails or email thread facilitates exchanging this information across teams via the email threads.

Id. at 13–14 (citing Spec. p. 11, ll. 11–27). Yet, the allegedly advantageous functionality relied upon (and referenced in the cited portion of the Specification) — i.e., “shield[ing] sales personnel from the complexities and changes in the underlying sales management systems,” “simplify[ing] interactions with the sales management systems into email communication mechanisms people are familiar with,” provide “easy access” to “mobile computing devices” for “sales personnel who travel frequently,” “simplif[ying] locating information for a step or action to be performed in a

sales process by including instructions and/or templates in response emails,” “reduc[ing] roll-out time for sales process changes,” “creat[ing] a unified recording point for ongoing sales activities and build[ing] a warehouse of information that can be exploited for further analysis,” and “record[ing] information in a string of emails or email thread facilitates exchanging this information across teams via the email threads” (*see id.*) — are not recited in independent claims 1, 10, and 18. Therefore, these referenced features and advantages identified in the Specification cannot amount to claim recitations that might amount to significantly more than the identified abstract idea, under the second step of the Alice framework and “Step 2B” of the *2019 Revised Guidance*, 84 Fed. Reg. at 56.

In view of the foregoing, the Appellants’ arguments do not persuade us of error in the rejection of independent claims 1, 10, and 18. Because no separate argument is provided for dependent claims 2–9, 11–17, 19, and 20 (*see Appeal Br. 14*), we sustain the rejection of claims 1–20 under 35 U.S.C. § 101.

Anticipation

The Appellants assert that Wulteputte’s disclosure lacks all of the recited functionality of the “sales governance system” of independent claims 1 and 10. *See Appeal Br. 15–16*.

However, the Appellants do not identify which particular claimed feature(s) are allegedly not met by Wulteputte, nor do the Appellants articulate a basis for such contentions. *See id.* The Appellants’ assertions are not persuasive of error in the rejection, because “[a] statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.” 37 C.F.R. § 41.37(c)(1)(iv).

Further, the Appellants allege that Wulteputte “does not teach or suggest the sales governance system features of independent claims 1 and 10,” based upon the following “example sales governance system . . . defined in the Present Specification”:

Sales governance system 22 is a central access point for collateral information, such as forms, spreadsheets, calculators, pricing, slide decks, brochures, other documents, and reference contacts for completing each step in a sales process. *Sales governance system 22* is a central access point for locating correct and up-to-date information on the sales process and for exchanging this information with personnel. *Sales governance system 22* is accessible to substantially all sales personnel uniformly and consistently.

Id. at 16 (quoting Spec. p. 7, ll. 3–9) (Appellants’ emphasis).

As the Examiner points out, the features identified in the foregoing quotation from the Specification are not set forth in either claim 1 or claim 10, such that they cannot provide a basis for distinguishing the claims from Wulteputte. Answer 9–10.

In view of the foregoing, the Appellants do not persuade us of error in the rejection of independent claims 1 and 10. Accordingly, we sustain the rejection of claims 1, 3–5, 7, 10, 16, and 17 under 35 U.S.C. § 102(b).

Obviousness

In regard to independent claim 18, the Appellants contend — in a manner similar to that discussed, above, regarding the anticipation rejection of independent claims 1 and 10 — that “claim 18 includes features not taught or suggested by Wulteputte, alone or in combination with the other cited references.” Appeal Br. 18.

Similar to the argument presented on anticipation, the Appellants do not identify which particular claimed feature(s) of claim 18 are allegedly not

taught or suggested by Wulteputte (whether alone or in combination with other references) — nor do the Appellants articulate a basis for the contention. Thus, the Appellants’ assertion is not persuasive of error in the rejection of independent claim 18, because “[a] statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.” 37 C.F.R. § 41.37(c)(1)(iv).

The Appellants assert that “dependent claims 2, 6, and 8–9 further define patentably distinct independent claim 1, dependent claims 11–15 further define patentably distinct independent claim 10, and dependent claims 19–20 further define patentably distinct independent claim 18.”
Appeal Br. 18.

Yet, the Appellants do not explain why any of the identified dependent claims might “further define” the respective independent claims in a nonobvious manner, such that the Appellants’ statement does not persuade us of error in the rejection of dependent claims 8, 9, 11–15, 19, and 20.

Accordingly, we sustain the rejection of claims 2, 6, 8, 9, 11–15, 18, 19, and 20 under 35 U.S.C. § 103(a).

DECISION

We AFFIRM the Examiner’s decision rejecting claims 1–20 under 35 U.S.C. § 101.

We AFFIRM the Examiner’s decision rejecting claims 1, 3–5, 7, 10, 16, and 17 under 35 U.S.C. § 102(b).

We AFFIRM the Examiner’s decision rejecting claims 2, 6, 8, 9, 11–15, and 18–20 under 35 U.S.C. § 103(a).

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED