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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRETT MACDONALD^{1,2}

Appeal 2018-000622
Application 14/839,341
Technology Center 3600

Before MAHSHID D. SAADAT, DAVID M. KOHUT, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

KOHUT, *Administrative Patent Judge*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) of the Examiner’s final rejection of claims 1–21. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Our Decision makes reference to Appellant’s Reply Brief (“Reply Br.,” filed October 23, 2017), and Appeal Brief (“Appeal Br.,” filed April 12, 2017), and the Examiner’s Answer (“Ans.,” dated August 25, 2017) and Final Office Action (“Final Act.,” dated August 10, 2016).

² We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a) (2017). Appellant identifies U Tech Innovations, Incorporated as the real party in interest. Appeal Br. 1.

INVENTION

According to the Specification, construction companies often target owners of storm-damaged properties to utilize their repair services.

Spec. ¶ 4. Given that storm-damage paths are generally non-linear swaths of damage that vary in severity, targeting owners is often difficult and time-consuming for these companies. *Id.* To solve this problem, Appellant's invention generates a targeted customer list using intersecting customer and weather data displayed onto a map. *See id.* at Abstract.

Independent claim 1 is illustrative of the claimed invention and is reproduced below.

1. A method of generating a list of targeted customers within a territory affected by a severe weather incident, the method comprising:

retrieving severe weather incident data for at least one previously-occurring severe weather incident from a first database, the severe weather incident data comprising weather data points defining a past pattern of severe weather;

retrieving customer data from a second database, the customer data comprising data for each of a plurality of customers, and for each customer a customer data point defining a geographic location related to that respective customer;

displaying the customer data points and the past pattern of severe weather onto a map viewable by a user, wherein the customer data points are geocoded for display on the map; and

transmitting a targeted customer list, wherein the targeted customer list is determined by at least one user-selected parameter and the intersection of customer data points with weather data points.

Appeal Br. 21 (Claims App.).

REJECTIONS

Claims 1–21 are rejected under 35 U.S.C. § 101 as being patent ineligible. Final Act. 2–3.

Claims 1–3, 5, 7–10, 12, 13, 15–17, 19, and 21 are rejected under 35 U.S.C. § 103 as being unpatentable over Root et al. (US 2007/0162234 A1, published July 12, 2007) (“Root”) and Smith (US 2006/0241865 A1, published October 26, 2006) (“Smith”). Final Act. 4–15.

Claims 4, 6, 11, 14, 18, and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Root, Smith, and Blessman et al. (US 2013/0226624 A1, published August 29, 2013) (“Blessman”). Final Act. 15–21.

ANALYSIS

Patent Eligibility

Principles of Law

An invention is patent eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4

in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221. “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

In January 2019, 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 “Guidance”). Under the Guidance, we first look, under “Step 2A,” to whether the claim recites:

- (1) Prong 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) Prong 2: additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (9th ed. rev. 08.2017 Jan. 2018).

If a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, we proceed to “Step 2B” and see whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is 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 Guidance, 84 Fed. Reg. at 56.

Examiner’s § 101 Rejection

The Examiner rejects process claims 1–21 as patent ineligible. Final Act. 2. The Examiner determines representative claim 1³ is directed to the “identification of customers affected by a weather event,” which involves the collection and comparison of information, and therefore, is an abstract idea. Final Act. 2–3; Ans. 3.

³ Regarding the rejection under 35 U.S.C. § 101, Appellant argues claims 1–21 as a group. *See* Appeal Br. 5–12 (arguing that the rejection of claims 2–21 is improper for similar reasons as claim 1); Reply Br. 1–3. We select claim 1 as representative of claims 1–21. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner further determines claim 1 does not recite additional elements that amount to significantly more than the judicial exception itself. Final Act. 3. The Examiner characterizes displaying data and transmitting a list of data as “insignificant extra-solution activities (data output).” *Id.* According to the Examiner, displaying and transmitting data “do not yield an improvement in the functioning of the computer itself, nor do they yield improvements to a technical field or technology” and are, at best, “an improvement to the business process.” *Id.* The Examiner also determines the claims are “implemented with generic technical components in a conventional way” and that the ordered combination is “well-understood, routine and conventional in the field.” *Id.*; Ans. 7.

Guidance Step 2A: Is the claim “directed to” a judicial exception?

Step 2A, Prong 1: Does the claim recite a judicial exception?

Step 2A of the Guidance is a two-prong inquiry. In Prong 1, we evaluate whether the claim *recites* a judicial exception, such as an abstract idea. Guidance, 84 Fed. Reg. at 51. The Guidance synthesizes the key concepts identified by the courts as abstract ideas into three primary subject-matter groupings: mathematical concepts, certain methods of organizing human activities, and mental processes—concepts performed in the human mind or via pen and paper (including observation, evaluation, judgment, and opinion). *Id.* at 52. For the reasons discussed below, claim 1 recites an abstract idea that falls in the Guidance’s subject-matter grouping of mental processes. *Id.*

Claim 1 recites a process with five steps (1)–(5). Steps (1), (2), and (3) recite mental processes that operate to identify customers affected by a weather event, as explained below.

The first step (1) of “retrieving severe weather incident data for at least one previously-occurring severe weather incident . . . the severe weather incident data comprising weather data points defining a past pattern of severe weather . . . onto a map viewable by a user” is nothing more than data collection, i.e., observation, that can be performed mentally. To offer a real-world example, this step encompasses a person, such as a handyman, observing storm damage at several locations (in person or in a local online discussion forum) and forming a mental map of the storm path. Drawing a map via pen and paper, the handyman can plot the locations of storm damage and then draw lines between plotted locations to define a pattern representing past severe weather.

Similarly, the second step (2) of “retrieving customer data . . . the customer data comprising data for each of a plurality of customers, and for each customer a customer data point defining a geographic location related to that respective customer” also represents mere observation, a mental process. In the handyman scenario, this could include the handyman recalling or looking up addresses of the geographic locations of former customers and marking those locations on the map.

The third step (3) of list determination “by at least one user-selected parameter and the intersection of customer data points with weather data points” represents comparing data or evaluating a correlation, which is also a mental process. This could encompass, for example, the handyman identifying which customer locations are marked within the pattern.

Thus, steps (1)–(3) recite mental processes. Our above analysis is consistent with the Examiner’s findings that claim 1 involves the mental processes “collection and comparison of information.” Final Act. 3. Courts

have held that collecting and comparing/analyzing information, in a way that can be performed mentally, or is analogous to human mental work, fall within the realm of abstract ideas. *See, e.g., Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“we have treated analyzing information by steps people go through in their minds . . . without more, as essentially mental processes within the abstract-idea category”); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016) (collecting and analyzing information are mental processes within the abstract-idea category); *CyberSource Corp. v. Retail Decisions*, 654 F.3d 1366, 1372 (Fed. Cir. 2011) (holding claims to obtaining and comparing data as unpatentable mental processes, because the steps can be performed in the human mind, or by a human using a pen and paper).

We further note that Appellant’s Specification discloses that “computer program implemented steps or acts may be combined with *operator or human implemented steps or acts* in order to carry out an embodiment of the invention” (emphasis added), thus supporting the position that the claimed steps can be performed mentally or manually. Spec. ¶ 34.

Based on the forgoing, claim 1 fits squarely into the Guidance’s subject-matter grouping of mental processes and therefore *recites* an abstract idea. We now proceed to Prong 2 to determine whether the claims are *directed to* the abstract idea.

*Step 2A, Prong 2: Is the judicial exception
integrated into a practical application?*

When a claim recites a judicial exception, such as an abstract idea, we determine in Prong 2 whether the recited judicial exception is integrated into

a practical application of that exception 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. If the *recited* judicial exception is not integrated into a practical application, the claim is *directed to* the judicial exception. *See* MPEP § 2106.05(a)–(c), (e)–(h).

Here, claim 1 recites the additional elements of a “first database” and a “second database.” The term “database” can be broadly construed to include a collection of related data in a handwritten, paper database (e.g., a card index). As such, the databases do not require a computer and thus cannot improve computer technology. *See* MPEP § 2106.05(a) (citing *RecogniCorp LLC v. Nintendo Co.*, 855 F.3d 1322, 1328 (Fed. Cir. 2017) (process for encoding/decoding facial data held ineligible because process did not require a computer)). Furthermore, the databases are not a particular machine so as to integrate the abstract idea into a practical application. *See* MPEP § 2106.05(b).

Even if the claimed “databases” are more narrowly construed to require computerized databases, these elements merely use a computer as a tool to perform an abstract idea (i.e., to collect or observe information) and are, therefore, insufficient to integrate the abstract idea into a practical application. *Guidance*, 84 Fed. Reg. at 5; *see also Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (“Courts have examined claims that required the use of a computer and still found that the underlying, patent-ineligible invention could be performed via pen and paper or in a person’s mind.”).

Claim 1 recites two more additional elements: the fourth step (4) of “displaying the customer data points and the past pattern of severe weather . . . wherein the customer data points are geocoded for display on the map” and the fifth step (5) of “transmitting a targeted customer list.”

These steps also do not require a computer. For example, in the handyman scenario above, the displaying step (4) encompasses the act of mounting or otherwise presenting the hand-drawn map, with both the storm pattern and customer geographic locations marked thereon. The transmitting step (5) encompasses the act of writing down on paper a list customers residing in the storm pattern that also meet any user-selected parameter, for instance, the customers must reside in the same county. As such, the claim neither improves technology nor is applied with any particular machine, and thus, it fails to integrate the judicial exception into a practical application. *See* MPEP § 2106.05(a),(b).

Assuming for the sake of argument that the claim requires a computerized display and computerized transmission, as discussed above, using a computer in its ordinary capacity, as a tool to display or transmit data, does not show an improvement in computer functionality and is insufficient to integrate the judicial exception into a practical application. *See, e.g., SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (“[M]erely presenting the results of abstract processes of collecting and analyzing information . . . is abstract as an ancillary part of such collection and analysis.”) (quotations omitted); *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”); *see also* MPEP

§ 2106.05(g) (discussing insignificant extra-solution activities including insignificant computer implementation). We therefore agree with the Examiner that displaying step (4) and transmitting step (5) are insignificant extra-solution activities and do not improve the functioning of the computer itself or another technology. *See* Final Act. 3.

Regarding Appellant's arguments, we are not persuaded that the Examiner has described claim 1 in an overly broad and simplistic manner, in that a proper evaluation would indicate that claim 1 achieves "an improved technological result." Appeal Br. 7, 10–11 (citing *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)); Reply Br. 2–3. Contrary to Appellant's contention that the claims are similar to those in *McRO*, claim 1 here, at most, uses generic computing components and functions to automate the abstract idea, but does not improve the underlying computer technology to provide such automation, as was the case in *McRO*. We agree with the Examiner that claim 1 is "implemented with generic technical components in a conventional way." Ans. 5, 7. The invention merely automates the conventional process of identifying owners of properties in a storm-damage path, achieving in a virtual environment that previously done by physically visiting property locations. However, the underlying methodology has not changed, i.e., determining which properties are in the storm-damage path (and therefore damaged and in need of repair) to identify owners of those properties. What has changed is that computers, via the Internet, have expanded access to information that was previously ascertained only by physically visiting a location. The result is easier and quicker identification of owners. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) ("[R]elying on a computer to perform

routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.”).

Appellant also argues that claim 1 is “a specific, discrete implementation” that “improves the field of storm damage evaluation by providing a visual indication.” Appeal Br. 13–15 (citing *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) and *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294, (Fed. Cir. 2016)). An improvement to the field of storm-damage evaluation, however, is not an improvement to a technical field. In other words, the improvement here is to the concept of storm-damage evaluation, not the computer technology used to implement the concept. This is clear from our review of the claim itself, which lacks technical detail, and our review of the Specification, which provides minimal technical details regarding the computer technology used to implement the claim, as discussed further below in Step 2B.

After considering all limitations individually and in combination, including the first and second databases, the displaying step (4), and the transmitting step (5), we are not persuaded that claim 1 integrates the judicial exception into a practical application. As such, claim 1 is *directed to* an abstract idea.

Guidance Step 2B: Does the claim provide an inventive concept?”

Having determined that claim 1 is directed to an abstract idea, we turn to Step 2B. We evaluate whether claim 1 provides an inventive concept (i.e., whether the additional elements amount to significantly more than the exception itself). The Examiner determined the claims do not recite an inventive concept because the additional elements in the claims do not

amount to “significantly more” than an abstract idea. *See* Final Act. 3. We agree.

Under the Guidance, we look to whether claim 1 recites any additional elements, individually or in combination, that are not “well-understood, routine, or conventional.” *See* MPEP § 2106.05(d). We are unable to identify any such additional elements.

Claim 1’s only additional elements are the first and second databases used to retrieve data, and the displaying and transmitting steps (4) and (5). According to the Examiner, the claims are “implemented with generic technical components in a conventional way” and that the combination is “well-understood, routine, and conventional.” Final Act. 2–3.

Turning to the Specification, it does not provide technical details regarding the databases, but rather states “information [is] retrieved from a third party database” and “the methods described herein may include any instrumentality . . . operable to compute, calculate, determine, classify, process, transmit, receive, retrieve, originate, switch, store, display, communicate, manifest, detect, record, reproduce, handle, or utilize any form of information.” Spec. ¶¶ 9, 29. Thus, the Specification only describes the databases at a high level of generality and confirms that the claimed steps can be performed by generic computer components.

Similarly, the Specification describes the manner of displaying and transmitting at a high level of generality and without technical detail. According to the Specification, the displaying step includes any visual display (e.g., a computer monitor) and “any commercial or freeware web browser or other application capable of retrieving content from a network and displaying pages or screens may be used” including “a suitable map

browser such as MapQuest, Google Maps, Google Earth, and Bing.” Spec. ¶¶ 30, 44. Transmitting the customer list includes sending “via e-mail, text message, or other text-based or multimedia-messaging communication medium such as email, Short Message Service (SMS), or Multimedia Messaging Service (MMS).” *Id.* ¶ 38.

Thus, the Specification is intrinsic evidence that the claimed “first database,” “second database,” the displaying step (4), and the transmitting step (5) are well-understood, routine, or conventional, and therefore, they do not amount to significantly more than an abstract idea. Rather, claim 1 simply appends well-understood, routine, conventional components previously known to the industry, specified at a high level of generality, to the claimed abstract idea.

Regarding Appellant’s argument that the Examiner failed to address the combination of additional elements (Appeal Br. 15), this is unpersuasive because, as discussed above, the Examiner addresses each individual element of the claim and further determines that the claimed combination “add[s] nothing new” and “is well-understood, routine and conventional in the field.” Final Act. 3.

In view of the foregoing, we are not persuaded Examiner erred in determining the additional elements in claim 1, including in combination, do not amount to significantly more than the judicial exception itself. Final Act. 2–3. Considering the claim limitations as an ordered combination adds nothing to the abstract idea that is not already present when the limitations are considered separately. *See Mayo*, 566 U.S. at 79. The ordered combination of limitations amounts to nothing more than certain mental processes implemented with generic computer components that operate “in a

conventional way.” *See* Ans. 7; *see also Alice*, 573 U.S. at 225–26.

Accordingly, we conclude the Examiner did not err in determining claim 1 does not provide an inventive concept.

Preemption

Appellant’s additional contention with respect to preemption is also not persuasive. Appeal Br. 13–15. In Appellant’s view, claim 1 recites significantly more because it is “narrowly circumscribed” such that it does not seek to preempt all methods for generating a list of targeted customers within a territory affected by a severe weather incident. *Id.* at 15. This is unpersuasive because the Federal Circuit has made clear that “the absence of complete preemption does not demonstrate patent eligibility” of a claim. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “[Q]uestions on preemption are inherent in and resolved by the § 101 analysis” according to *Mayo* and *Alice*, which we applied here. *Id.*

Summary

For at least the above reasons, under the Guidance, we sustain the Examiner’s § 101 rejection of independent claim 1. Independent claim 16 presents us with the same dispositive issues as claim 1, and Appellant does not present separate arguments for dependent claims 2–15 and 17–21. *See* Appeal Br. 6–16; Reply Br. 1–3. Thus, we sustain the Examiner’s rejection of claims 2–21 for the same reasons set forth above for claim 1.

Obviousness

Claim 1

The Examiner finds Root teaches retrieving data for “previously-occurring” severe weather events, as required by claim 1. Final Act. 4 (citing Root ¶ 13).

Appellant argues that Root does not teach retrieving previously-occurring (past) weather events. Appeal Br. 17–18. Appellant argues that Root “relates to predictive modeling or forecasting of *future* weather events” and provides “weather *warnings* and *advisories* to persons in specified areas.” Reply Br. 4 (citing Root ¶¶ 9, 33); *see* Appeal Br. 17–18.

Contrary to Appellant’s argument, Root is not limited to weather forecasting or providing weather warnings. *See* Root ¶ 22 (“weather forecasts and/or weather advisories *or any other weather information*” (emphasis added)). For example, Root teaches providing weather information to vendors for purposes of targeted marketing. Final Act. 6–7 (citing Root ¶¶ 44–46). In one such embodiment, Root teaches that a snow-blower vendor can input a weather content identifier (e.g., amount of snow) and a time identifier to identify potential customers in a specified area. Root ¶ 46. Root explains that time identifiers may be times in the *past*, present, or future. Root ¶ 33; Ans. 9. Furthermore, as pointed out by the Examiner, paragraph 13 of Root explicitly teaches receiving “real-time weather data,” where “[t]he term ‘weather data’ describes a wide variety of weather products including . . . *past and current conditions of weather events.*” Final Act. 4 (emphasis added). Thus, Root teaches retrieving data for past, or previously-occurring, weather events.

Based on the forgoing, we are not persuaded that the Examiner erred in finding the combination of Root and Smith teaches retrieving data for at least one previously-occurring severe weather incident. We therefore sustain the Examiner's rejection of independent 1 under 35 U.S.C. § 103.

Remaining Claims

With respect to independent claim 16, Appellant's arguments present us with the same dispositive issues as claim 1. *See* Appeal Br. 18–19; Reply Br. 3–4. Appellant does not present separate arguments for dependent claims 2–15 and 17–21. *Id.* Thus, we sustain the Examiner's rejections of claims 2–21 for the same reasons set forth above for claim 1.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–21	101	Eligibility	1–21	
1–3, 5, 7–10, 12, 13, 15–17, 19, 21	103	Root, Smith	1–3, 5, 7–10, 12, 13, 15–17, 19, 21	
4, 6, 11, 14, 18, 20	103	Root, Smith, Blessman	4, 6, 11, 14, 18, 20	
Overall Outcome			1–21	

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