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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MONIQUE M. HENDRIKS, AART VAN HALTEREN,
and LU WANG

Appeal 2018-000935
Application 14/202,986
Technology Center 3700

Before WILLIAM A. CAPP, ERIC C. JESCHKE, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ seek our review under 35 U.S.C. § 134(a) of the final rejection of claims 1–14 and 16–19. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Koninklijke Philips N.V. is the Applicant and the real party in interest.
Br. 3.

RELATED CASE DISPOSITION

A related case with substantially similar claimed subject matter, the same inventors, and the same assignee, was recently before us in the case of *Ex parte Monique M. Hendriks*, Appeal 2017-008715 (dated July 9, 2018). Therein, we issued a Decision affirming the Examiner's rejection of all pending claims (1–15), among other things, as being directed to ineligible subject matter under 35 U.S.C. § 101. *See* Application 14/202,796 (now abandoned).

THE INVENTION

Appellants' invention is an automated life coach. Spec. ¶¶ 1–3. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method for increasing the likelihood of inducing behavior change in a lifestyle management program for a user comprising:

sensing, by a first sensor configured to sense location of a user and a second sensor configured to sense activity of the user, at least one behavior parameter of a user via sensing the location and activity of the user;

storing, in a database, the at least one behavior parameter of the user;

identifying, by a computing resource, at least one intention-behavior gap based on the sensing of the at least one behavior parameter;

generating, by the computing resource using a genetic algorithm, a personalized, quantified profile of the at least one intention-behavior gap of the user;

providing, via a user interface on a display, at least one action that the user can accept or reject; and

varying, by the computing resource, the personalized, quantified profile based on the at least one action accepted or rejected by the user.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Cuthbert US 2013/0216989 A1 Aug. 22, 2013

Chein-Shung Hwang et al., *Using Genetic Algorithms for Personalized Recommendation*, International Conference on Computational Collective Intelligence 104–112 (J.S. Pan et al. eds., ©Springer-Verlag Berlin Heidelberg 2010).

The following rejections are before us for review:

1. Claims 1–14 and 16–19 are rejected under 35 U.S.C. § 101 as directed to ineligible subject matter.
2. Claims 1–14 and 16–19 are rejected under 35 U.S.C. § 103 as being unpatentable over Cuthbert and Hwang.²

OPINION

Patent Eligibility under 35 U.S.C. § 101

The controlling statute provides that “[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. The Courts recognize certain judicial exceptions to Section 101, namely: (1) laws of nature, (2) natural phenomena, and (3) abstract ideas. *See Mayo Collaborative Svc. v. Prometheus Labs, Inc.*, 566 U.S. 66, 70–71 (2012).

² Provisional rejections on the grounds of nonstatutory double patenting have been obviated by the abandonment of previously co-pending Application 14/202,796.

The Supreme Court has 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.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo*, 566 U.S. at 72–73). According to the Supreme Court’s framework, we must first determine whether the claims at issue are directed to one of those concepts. *Id.* If so, we must secondly “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.” *Id.*

Courts treat collecting information as well as analyzing information by steps people go through in their minds as essentially mental processes within the abstract-idea category. *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). In situations where an abstract idea is implemented on a computer, the first step in the *Alice/Mayo* analysis asks whether the focus of the claims is on a specific improvement in computer capabilities or, instead, on a process that qualifies as an “abstract idea” for which computers are invoked merely as a tool. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016).

The Supreme Court characterizes the second step of the 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*, 134 S.Ct at 2355 (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73). Where the claim is directed to an abstract idea that is implemented on a computer, merely stating the abstract idea while adding the words “apply it”

is not enough to establish such an inventive concept. *See Alice*, 134 S.Ct. at 2358.

[I]f that were the end of the § 101 inquiry, an applicant could claim any principle of the physical or social sciences by reciting a computer system configured to implement the relevant concept.

Id. at 2359.

With respect to the first step, the Examiner determines that the claims are directed to an abstract idea, namely, a method of organizing human activity. Final Action 6. According to the Examiner, managing intrapersonal activities, such as human behavior, is commonly performed by a mental health professional, life coach, or physical trainer. *Id.* The Examiner further finds that the claims represent an idea of itself, which is an abstract idea. *Id.* The Examiner further finds that the claims are directed to a mathematical relationship or formula, which is also an abstract idea. *Id.*

With respect to the second step of the *Alice/Mayo* analysis, the Examiner finds:

The claims, including the dependent claims, do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements or combination of elements in the claims are simply a generic recitation of a first sensor (claim 1), a second sensor (claim 1), a database (claims 1, 16, and 18), a computing resource (claim 1, 16, and 18), a user interface (claim 1, 16, and 18), a display (claim 1, 16, and 18), a smart phone (claim 14), at least one sensor (claims 16 and 18), and a dedicated device (claim 16) that serve to merely link the abstract idea to a processing device that are well understood, routine, and conventional activities previously known to the pertinent industry. . . . In other words, they do not provide, both individually and as a combination, improvements to another

technology or technical field nor to the functioning of the computer itself.

Id. at 6–7.

Appellants argue that the claims are not directed to an abstract idea and, instead, “are directed to the use of sensors and a genetic algorithm to induce behavioral changes in a user using a method that a mental health professional, a life coach, or a physical trainer would be unable to perform without the invention.” Br. 11–12. Appellants argue that the invention is an important tool that a user can utilize to make life-saving lifestyle changes. *Id.* at 12. Appellants emphasize that, unlike a personal coach, their tool is with the user 24 hours per day, seven days per week. *Id.* Appellants further argue that the invention uses a genetic algorithm, which is something that a mental health professional does not use or apply. *Id.* Appellants assert that the invention solves a need for behavior modification which has not previously been met. *Id.*

A method of organizing human activity is recognized by the courts as an abstract idea. *See In re TLI Communications LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016) (classifying and storing digital images is an abstract idea as a method of organizing human activity); *see also BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (filtering internet content is an abstract idea as a method of organizing human behavior); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367 (Fed. Cir. 2015) (tracking financial transactions to determine whether they exceed a pre-set spending limit is an abstract idea as a method of organizing human activity); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1351 (Fed. Cir. 2014) (humans have always performed the functions of data

collection, recognition, and storage); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1350 (Fed. Cir. 2014) (organizing information through mathematical correlations is an abstract idea); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) (screening messages is an abstract idea as a method of organizing human activity).

“Information as such is an intangible,” hence abstract, and “collecting information, including when limited to particular content (which does not change its character as information), [i]s within the realm of abstract ideas.” *Electric Power Group.*, 830 F.3d at 1353. So, too, is “analyzing information . . . by mathematical algorithms, without more.” *Id.* at 1354. Consequently, claims focused on “collecting information, analyzing it, and displaying certain results of the collection and analysis” are directed to an abstract idea. *Id.* at 1353. Furthermore, “merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.” *Id.* at 1354. The claims here are directed to abstract ideas under the principles espoused in *Electric Power Group*.

We are not persuaded by Appellants’ effort to characterize “*inducing behavioral changes in a user*” as anything other than an abstract idea of organizing human activity. Br. 12. Here, the method of claim 1 generally comprises six functional method steps, namely: (1) sensing; (2) storing; (3) identifying; (4) generating; (5) providing; and (6) varying. Claims App. The method collects, processes, and presents information to induce users to

change their behavior. Such is properly characterized as organizing human activity.

The prospect that Appellants' method uses a computerized "tool" does not render the claims less abstract. An abstract idea does not become nonabstract by limiting the invention to a particular technological environment. *Intellectual Ventures I*, 792 F.3d at 1367; *see also Affinity Labs of Texas, LLC v. DirecTV, LLC*, 838 F.3d 1253, 1259 (Fed. Cir. 2016) (Merely limiting the field of use of the abstract idea to a particular existing technological environment does not render the claims any less abstract); *see also Alice*, 134 S.Ct. at 2358 (the fact a computer exists in the physical realm is beside the point). Unlike *Enfish*, the focus of the instant claims is not on improving a computer, but rather on a process for which computers are invoked merely as a tool. *See Enfish*, 822 F.3d at 1335–36. The Examiner is correct that modifying behavior is a method of organizing human activity. Ans. 6. The claims, thus, fall into a familiar class of claims directed to a patent-ineligible concept, namely, an abstract idea.

Turning to step 2 of the *Alice/Mayo* analysis, we look more precisely at what the claim elements add in terms of whether they identify an "inventive concept" in the application of the ineligible matter to which the claim is directed to. *See SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018). "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].'" *Alice*, 134 S.Ct. at 2357 (quoting *Mayo*, 566 U.S. at 77–78). Those "additional features" must be more than well-understood, routine, conventional activity. *Mayo*, 566 U.S. at 79.

Appellants argue that the claims contain an inventive concept that transforms the abstract idea into a patent eligible application. Br. 12–16. However, what Appellants point to as “inventive” is just the abstract idea itself. *Id.* We may assume that the techniques claimed are “[g]roundbreaking, innovative, or even brilliant,” but that is not enough for eligibility. *SAP Am.*, 898 F.3d at 1163 (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013)). Appellants’ steps of sensing, storing, identifying, generating, providing, and varying merely tell a computer to “apply” the abstract idea of step 1. However, it does not matter how innovative Appellants’ abstract idea is. *Id.* A claim for a new abstract idea is still an abstract idea. *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016).

Appellants analogize this case to a rubber molding example from a guidance memo. Br. 14. However, we do not consider life coaching analogous to rubber molding. Appellants’ invention is facilitated by a “computing resource 201,” that provides “computing capability.” Spec. ¶ 94. Appellants disclose a “client device 102” that may be coupled to a network and communicate with an activity monitor 105. *Id.* ¶ 95. Client device 102 is a desktop computer, laptop computer, tablet computer, personal digital assistant, mobile device, smart phone, gaming console, or “other devices with like capability.” *Id.* ¶ 96. Client device 102 executes applications such as a browser to access web pages or other network content. *Id.* Client device 102 executes email, instant messaging, and other unspecified applications. *Id.* Network 104 includes the internet, intranets, extranets, wired networks, wireless networks, wide area networks, local area networks, and other unspecified but “suitable” networks. *Id.* ¶ 97.

Computing resource 201 and client device 102 each include a processor 107 and memory 108. *Id.* ¶ 98. The processor is configured to process any of the steps or functions of computer resource 201, system 200, or any of the modules, units or components thereof. *Id.* ¶ 99. Processor 107 may be comprised of a single integrated circuit or use a plurality of integrated circuits that are connected together. *Id.* Memory 108 may include both volatile and nonvolatile memory and data storage components including RAM, ROM, hard disk drives, USB flash drives, memory cards, optical disk drives, and magnetic tapes. *Id.* ¶ 100. Memory 108 stores instructions that are executable by the processor. *Id.* ¶ 102.

The computer implementation of Appellants' abstract idea is described at a high level of generality that presumes familiarity on the part of the reader. There is nothing in the description of the computer equipment, software, and user interface components that purports to be a breakthrough or advancement in computer technology. *Alice*, 134 S.Ct. at 2359.

A patent applicant is required to submit a specification that contains a written description of the invention in "full, clear, concise, and exact terms." 35 U.S.C. § 112(a). For purposes of the *Alice/Mayo* analysis, a specification demonstrates the well-understood, routine, conventional nature of step 2 "additional elements" when it describes them in a manner that indicates they are sufficiently well-known that they need not be described with particularity to satisfy 35 U.S.C. § 112(a).³ That is the case here.

³ Memorandum from the U.S. Patent & Trademark Office, *Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (Berkheimer v. HP, Inc.)* (Apr. 19, 2018).

Essentially, all Appellants have done here is use generic computer data gathering, processing, and display technology to automate the functions of a “life coach” or similar mental health professional. As in *Alice*, “each step does no more than require a generic computer to perform generic computer functions.” *Alice*, 134 S.Ct. at 23559. Accordingly, we sustain the Examiner’s Section 101 rejection of claims 1–14 and 16–19.

*Unpatentability of Claims 1–14 and 16–19
over Cuthbert and Hwang*

We do not reach the obviousness rejections because the affirmance of the Examiner’s Section 101 rejection disposes of all claims on appeal. *See* 37 C.F.R. § 41.50(a)(1) (The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed).

DECISION

The decision of the Examiner to reject claims 1–14 and 16–19 as being directed to unpatentable subject matter under 35 U.S.C. § 101 is affirmed.

We do not reach the Examiner’s art rejection. *See* 37 C.F.R. § 41.50(a)(1).

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).

AFFIRMED