



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
14/071,229 11/04/2013 Konstantin Zilberberg P7521US00 1966

11764 7590 11/20/2018
Ditthavong & Steiner, P.C.
44 Canal Center Plaza
Suite 305
Alexandria, VA 22314

EXAMINER

MCGHEE, TRACY M

ART UNIT PAPER NUMBER

2154

NOTIFICATION DATE DELIVERY MODE

11/20/2018

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@dcpatent.com
Nokia.IPR@nokia.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KONSTANTIN ZILBERBERG, JIALING LI, and TAO WU

Appeal 2018-001798
Application 14/071,229
Technology Center 2100

Before ST. JOHN COURTENAY III, BETH Z. SHAW, and
JOYCE CRAIG, *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Appellants² seek our review under 35 U.S.C. § 134(a) of the Examiner’s Final Rejection of claims 1–20, which represent all the pending claims. Claims 21–48 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Throughout this Decision we have considered the Appeal Brief filed June 5, 2017 (“App. Br.”), the Reply Brief filed December 4, 2017 (“Reply Br.”), the Examiner’s Answer mailed October 5, 2017 (“Ans.”), and the Final Rejection mailed December 23, 2016 (“Final Act.”).

² Appellants identify HERE Global B.V. as the real party in interest. App. Br. 1.

INVENTION

Appellants' invention is directed to calculating trust levels for data sources. Spec. ¶ 2.

Claim 1 is illustrative of the claims at issue and is reproduced below:

1. A method of collecting data from a categorized data source, the method comprising:
 - a receiving of one or more extracted data from a plurality of data sources;
 - a comparing of the received one or more extracted data with one or more other data;
 - at least one determination, based on the comparing, of one or more attributes associated with extracting data from the plurality of data sources, wherein the one or more attributes relate, at least in part, to a compatibility, quantified based on a predetermined threshold value, of merging or matching in determining accuracy or relevancy of data associated with the plurality of data sources;
 - a processing of the one or more determined attributes to cause, at least in part, (a) a ranking of the plurality of data sources, (b) a calculation of one or more trust levels of the plurality of data sources, or (c) a combination thereof, wherein the ranking and/or the one or more trust levels are associated, at least in part, with an accuracy, a relevancy or a combination thereof of the plurality of data sources;
 - a categorizing of the plurality of data sources based, at least in part, on the processing of the one or more determined attributes; and
 - a collecting of data from at least one of the one or more categorized data sources based, at least in part, on the categorizing, wherein the collecting from the one of the one or more categorized data sources ensures at least one of increased relevance of the collected data, increased accuracy of the collected data or a combination thereof.

REJECTIONS

The Examiner rejected claims 1–20 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 2–3.

The Examiner rejected claims 1–20 under 35 U.S.C. § 103(a) as unpatentable over Stephens (US 2005/0235343 A1, Oct. 20, 2005), Luo (US 2011/0022602 A1, Jan. 27, 2011), and Lawrence (US 2006/0004866 A1, Jan. 5, 2006). Final Act. 4.

CONTENTIONS AND ANALYSIS

We have reviewed Appellants’ arguments in the Briefs, the Examiner’s obviousness rejections, and the Examiner’s response to Appellants’ arguments. Appellants do not proffer sufficient argument or evidence for us to find error in the Examiner’s findings. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). For at least the reasons discussed below, we agree with and adopt the Examiner’s findings and conclusions in the Final Action and Answer.

Section 101 Rejection

With respect to claims 1–20, the Examiner concludes these claims are directed to an abstract idea of collecting and comparing information. Ans. 8, 9; Final Act. 3. The Examiner also finds additional elements recited in these claims do not amount to significantly more than the abstract idea itself. *Id.* According to the Examiner, the claims require no more than mere instructions to implement the idea on a generic computer. *Id.*

Appellants contend the Examiner erred because the claims “carve out an apparatus and method providing a specific way of processing and

collecting data from different data sources such that the collected data is associated with increased relevance and accuracy.” App. Br. 7.

We do not find Appellants’ arguments persuasive. At the outset, we note the Supreme Court has long held that “[l]aws 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 *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The “‘abstract ideas’ category embodies ‘the longstanding rule that ‘[a]n idea of itself is not patentable.’” *Alice*, 134 S. Ct. at 2355 (alteration in original) (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court sets forth an analytical “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77–78 (2012)). The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.*

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. 79, 78). In other words, the second step is to “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.’” *Id.* (alteration in original) (quoting *Mayo*, 566 U.S. at

72–73). The prohibition against patenting an abstract idea “cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant postsolution activity.’” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citation omitted).

Turning to the first step of the *Alice* inquiry, we agree with the Examiner that Appellants’ claims are directed to an abstract idea of collecting and comparing information. Ans. 8. All of the steps in Appellants’ claims, e.g., receiving extract data, comparing extracted data with one or more other data, making a determination based on the comparing, categorizing the data, and collecting data are similar to concepts previously found abstract by our reviewing court. *See e.g., Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (the collection of information and analysis of information are abstract ideas).

Turning to the second step of the *Alice* inquiry, we find nothing in Appellants’ claims to add anything “significantly more” to transform into a patent-eligible application the abstract concept of collecting and comparing information. *Alice*, 134 S. Ct. at 2357. Appellants do not argue any of the steps recited in these independent claims are individually inventive.

Limiting an abstract concept of collecting and comparing information to a general purpose computer having generic components, such as the “processor” recited in Appellants’ claim 11 (claim 1 does not recite any computer elements), does not make the abstract concept patent-eligible under 35 U.S.C. § 101. As recognized by the Supreme Court, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2358; *see id.* at 2359 (concluding claims “simply instruct[ing] the practitioner to implement

the abstract idea of intermediated settlement on a generic computer” are not patent eligible); *see also Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715–16 (Fed. Cir. 2014) (claims merely reciting abstract idea of using advertising as currency as applied to particular technological environment of the Internet are not patent eligible); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (claims reciting “generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer” are not patent eligible); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333–34 (Fed. Cir. 2012) (“[s]imply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render [a] claim patent eligible” (internal citation omitted)).

Appellants cite *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) (App. Br. 6–7; Reply Br. 3), but do not persuasively explain why that case is similar to the present case. In *Bascom*, the court determined the inventive concept at the pleading stage and construed in favor of the nonmovant,

The inventive concept described and claimed . . . is the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server. BASCOM explains that the inventive concept rests on taking advantage of the ability of at least some ISPs to identify individual accounts that communicate with the ISP server, and to associate a request for Internet content with a specific individual account.

Bascom, 827 F.3d at 1350 (emphasis added).

The rejected claims are unlike the claims of *Bascom* because they are not directed to an “installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” *Id.* at 1350. Nor do they “give[] the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server.” *Id.* In fact, the pending claims do not even recite any “ISP server,” nor does claim 1 recite any computer or sever elements at all. Indeed, the method of claim 1 could be performed in the human mind. The type of claimed activity, i.e., collecting and comparing information, includes longstanding conduct that existed well before the advent of computers and the Internet, and could be carried out by a human with pen and paper. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson.*”). “[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.” *Id.* at 1373

Because Appellants’ claims 1–20 are directed to a patent-ineligible abstract concept and do not recite something “significantly more” under the second prong of the *Alice* analysis, we sustain the Examiner’s rejection of these claims under 35 U.S.C. § 101 as being directed to non-statutory subject matter in light of *Alice* and its progeny.

Section 103 Rejection

Appellants argue the Examiner failed to address the following features of claim 1: “a receiving of one or more extracted data from a plurality of

data sources;” “a comparing of the received one or more extracted data with one or more other data;” and “at least one determination, based on the comparing, of one or more attributes associated with extracting data from the plurality of data sources.” App. Br. 10–12; Reply Br. 3, 4. We disagree. The Examiner explicitly mapped these claim elements in the Final Action to the teachings of Lawrence. Final Act. 5.

Appellants also argue Stephens fails to teach any type of *determined attributes*, “much less attributes that are determined based on extracted data from a plurality of data sources.” App. Br. 11.

First, our reviewing court has explicitly held that 37 C.F.R. § 41.37 “require[s] more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.” *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011).

Second, the Examiner relies on Lawrence, not Stephens alone, to teach “at least one determination” of the “one or more attributes.” Final Act. 5. The Examiner relies on Stephens to teach “processing of the one or more determined attributes to cause, at least in part, (a) a ranking of the plurality of data sources, (b) a calculation of one or more trust levels of the plurality of data sources, or (c) a combination thereof.” Final Act. 4; Ans. 17. Thus, Appellants’ arguments regarding Stephens’s alleged individual shortcomings in this regard are unavailing, for the Examiner does not rely solely on Stephens for teaching the one or more determined attribute(s), but rather the cited prior art collectively.

Moreover, we agree that Lawrence teaches determining at least one attribute and that Stephens teaches weights and calculations that may be

used to determine the relative trustworthiness of a website. Ans. 16–17 (citing *Stephens* ¶ 13, Fig. 4). In the absence of sufficient evidence or line of technical reasoning to the contrary, the Examiner’s response is supported by a preponderance of the evidence, and we find no reversible error.

Therefore, we sustain the § 103 rejection of claim 1. For the same reasons, we sustain the § 103 rejections of the remaining pending claims, which Appellants argue together with claim 1. App. Br. 12. *See* 37 C.F.R. § 41.37(c)(1)(iv) (“Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.”).

For these reasons, and for the additional reasons stated in the Final Office Action and Answer, we sustain the § 103 rejections of claims 1–20.

DECISION

We affirm the decision of the Examiner 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).

AFFIRMED