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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LEKAN WANG, CASEY KETTERLING, MICHAEL WINLO, and CHRISTOPHER RYAN LUCK

Appeal 2018-002133[1]
Application 13/949,043
Technology Center 3600

Before CARL W. WHITEHEAD JR., PHILLIP J. KAUFFMAN, and ADAM J. PYONIN, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] Palantir Technologies, Inc. is the identified real party in interest. App. Br. 1.

STATEMENT OF THE CASE

Introduction

The Application is directed "to data processing techniques for fraud detection in the context of health insurance." Spec. ¶ 2. Claims 1–23 and 25 are pending; of these, claims 1 and 21 are independent. *See* App. Br. 1–2. Claim 1 is reproduced below for reference (with added claim element lettering):

> 1. A method comprising:
>
> [a] storing using a common model, health care data from a plurality of different sources, the common model comprising a plurality of ontologies that can be used to generate a digital graph and to present the digital data in a visual graph, wherein each ontology of the plurality of ontologies specifies a discrete object type the ontology applies to and instructions on how to instantiate a computer data object in the digital graph based on the discrete object type;
>
> [b] determining that for a first digital database, digital information from the first digital database is to be represented in the digital graph using a provider ontology defined in the common model;
>
> [c] determining that for a second digital database, digital information from the second digital database is to be represented in the digital graph using a recipient ontology defined in the common model;
>
> [d] determining that for a third digital database, digital information from the third digital database is to be represented in the digital graph using an event ontology defined in the common model;
>
> [e] determining that for a fourth digital database, digital information from the fourth digital database is to be represented in the digital graph using a fraud ontology defined in the common model, wherein the first digital database, second digital database, third digital database, and fourth digital database comprise different database sources of digital information;

[f] based on the provider ontology specified by the common model, generating provider objects from digital information stored in the first digital database that describe health care providers;

[g] based on the recipient ontology specified by the common model, generating patient objects from digital information stored in the second digital database that describe health care recipients;

[h] based on the event ontology specified by the common model, generating health care event objects from digital information stored in the third digital database that describe one or more of:

[i] health care claims, prescriptions, medical procedures, or diagnoses;

[j] based on the fraud ontology specified by the common model, generating fraud objects from digital information stored in the fourth digital database representing known instances of health care fraud;

[k] storing the provider objects, patient objects, health care event objects, and fraud objects in a digital computer-readable storage medium;

[l] identifying first relationships between the provider objects and the patient objects based on the health care event objects;

[m] identifying second relationships between the fraud objects and the provider objects and/or the patient objects;

[n] based on identifying the first relationships and the second relationships, generating the visual graph that depicts linked nodes, the linked nodes including at least one or more patient nodes that represent one or more of the patient objects, one or more provider nodes that represent one or more of the provider objects, one or more fraud nodes that represents one or more of the fraud objects, the linked nodes interconnected within the visual graph by visual links, the visual links representing the first relationships and the second relationships and generating the visual graph comprises [o] determining using rules-based analysis, based on a particular fraud object, a particular data object represented by a particular node as potentially related to fraudulent behavior, the particular node

being more than one degree of separation in the visual graph from a particular fraud node representing the particular fraud object, and labeling the particular node in the visual graph as a node potentially related to fraudulent behavior;

[p] causing a computing device to present on a screen the visual graph that depicts linked nodes, the linked nodes including at least one or more patient nodes that represent one or more of the patient objects, one or more provider nodes that represent one or more of the provider objects, one or more fraud nodes that represents one or more of the fraud objects, the linked nodes interconnected within the visual graph by visual links, the visual links representing the first relationships and the second relationships;

[q] presenting the particular node in the visual graph on the screen using a link to another node and a visual label that the particular node is potentially related to fraudulent behavior;

[r] wherein the method is performed by one or more computing devices.

Rejection

Claims 1–23 and 25 stand rejected under 35 U.S.C. § 101 as being patent ineligible. Final Act. 3.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments. Arguments Appellants could have made but chose not to make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner determines claim 1 is patent ineligible under 35 U.S.C. § 101, "because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more." Final Act. 3; *see also Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014) (describing the two-step framework "for

distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts").

After the docketing of this Appeal, the USPTO published revised guidance on the application of § 101 ("Guidance"). *See* USPTO's 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Memorandum"). Pursuant to the Guidance "Step 2A," the office first looks to whether the claim recites:

> (1) Prong One: 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 Two: additional elements that integrate the judicial exception into a practical application (see MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office then (pursuant to the Guidance "Step 2B") look to whether the claim:

> (3) adds a specific limitation beyond the judicial exception that are 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 Memorandum.

We are not persuaded the Examiner's rejection is in error. We adopt the Examiner's findings and conclusions as our own, to the extent consistent with our analysis herein. We add the following primarily for emphasis and clarification with respect to the Guidance.

A. Step 2A

Appellants argue the Examiner errs in determining claim 1 is abstract, because claim 1 is "rooted in technology and address[es] a business challenge that specifically arises from the use of technology in the health care industry." App. Br. 9. Particularly, Appellants contend the claim "recite[s] a specific, concrete implementation of improvements to data processing systems that are used for automated fraud detection, including specific data structures and processes that are used to implement those improvements." App. Br. 7.

Prong One

Pursuant to Step 2A, Prong One of the Guidance, we are not persuaded the Examiner errs in determining claim 1 recites an abstract idea. *See* Final Act. 3–4; Memorandum Section III (A) (1) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception), 84 Fed. Reg. at 54. The claim recites elements [a], [b], [c], [d], [e], [f], [g], [h], [i], [j], [k], [m], and [o], which are steps of analyzing data from various databases, determining information, identifying relationships among the information, and presenting the information to show potentially fraudulent behavior. These limitations—for determining fraud—are steps of "observation, evaluation, judgment, opinion" and are thus "[m]ental processes." Memorandum Section I, 84 Fed Reg. at 52; *see also* Spec. ¶ 61. Further, these limitations "mitigat[e] risk" (i.e., medical fraud) and "follow[] rules or instructions" as part of "managing personal behavior or relationships or interactions between people," thus these limitations are also "[c]ertain methods of organizing

human activity." Memorandum Section I, 84 Fed Reg. at 52; *see also* Spec. ¶ 130. Accordingly, we conclude the claims recite an abstract idea.

Appellants' arguments focus on the claims being "specific" and "concrete." *See, e.g.*, App. Br. 14; *see also* App. Br. 6–12. The specificity of the presently recited techniques, however, is insufficient to establish patent eligibility, as the *specific and concrete* limitations of claim 1 are abstract pursuant to the Guidance. Memorandum, 84 Fed. Reg. at 54 ("[D]etermine whether the identified limitation(s) falls within the subject matter groupings of abstract ideas enumerated in Section I of the 2019 Revised Patent Subject Matter Eligibility Guidance."); *FairWarning IP, v. Iatric Sys.,* 839 F.3d 1089, 1094 (Fed. Cir. 2016) (Determining the claims are abstract because "the claims here are directed to collecting and analyzing information to detect misuse and notifying a user when misuse is detected."); *see also Alice*, 573 U.S. at 222, (quoting *Parker v. Flook*, 437 U.S. 584, 593 (1978)) ("In holding that the process was patent ineligible, we rejected the argument that 'implement[ing] a principle in some specific fashion' will 'automatically fal[l] within the patentable subject matter of § 101.'").

Accordingly, claim 1 "recites a judicial exception . . . [and] requires further analysis in Prong Two" of the Guidance. Memorandum, 84 Fed. Reg. at 54.

Prong Two

We are also not persuaded the Examiner's rejection is in error pursuant to Step 2A, Prong Two of the Guidance. The "cumulative nature of certain of the claim limitations" (App. Br. 17) is at most a "drafting effort"

that does not "apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception" (Memorandum, 84 Fed. Reg. at 53). Nor do we agree that the limitations are responsive to "a problem that is rooted in the use of computer technology" (App. Br. 6), because "[t]hese are the same questions (though perhaps phrased with different words) that humans in analogous situations detecting fraud have asked for decades, if not centuries" (*FairWarning*, 839 F.3d at 1095). *See* Spec. ¶¶ 4–5.

Similarly, we agree with the Examiner that claim 1 does not effect a technical improvement as "the instant claim is an improvement of the process of fraudulent behavior identification and not the computer functionality." Final Act. 3; *see also* App. Br. 9–17, 21. That is, the claim recites the mental steps/organizing human activity of fraudulent behavior identification; the recited computing devices and presented visual graph are the mere use of "a computer as a tool to perform an abstract idea," and "do[] no more than generally link the use of a judicial exception to a particular technological environment." Memorandum, 84 Fed. Reg. at 55; *see also* Final Act. 5; *cf. Intellectual Ventures I v. Capital One Bank (USA),* 792 F.3d 1363, 1371 (Fed. Cir. 2015) ("Requiring the use of a 'software' 'brain' 'tasked with tailoring information and providing it to the user' provides no additional limitation beyond applying an abstract idea, restricted to the Internet, on a generic computer."); *Alice*, 573 U.S. at 226 ("Nearly every computer . . . [is] capable of performing the basic calculation, storage, and transmission functions," so that "none of the hardware recited by the system claims 'offers a meaningful limitation beyond generally linking 'the use of

the [method] to a particular technological environment,' that is, implementation via computers." (alteration in original) (citation omitted)).

Accordingly, we determine claim 1 does not integrate the judicial exception into a practical application. *See* Memorandum, 84 Fed. Reg. at 54. As the "claim recites a judicial exception and fails to integrate the exception into a practical application" (*id.* at 51), "the claim is directed to the judicial exception" (*id.* at 54).

B. Step 2B

We agree with the Examiner that the claimed elements and combination of elements do not amount to significantly more than the judicial exception itself. *See* Final Act. 4; Memorandum, Section III(B) (Step 2B), 84 Fed. Reg. at 56. Appellants argue the "none of the substantive process steps recited in the claims are generic," but other than reciting block quotations of the claims, Appellants have not shown any recited additional elements (or combination of elements) amount to significantly more than the judicial exception itself. App. Br.18; *see also* Memorandum, fn. 24. Based on the record before us, we agree with the Examiner that the claimed additional elements and combination of elements only recite generic components and steps that are well-understood, routine, and conventional. *See* Final Action 4–5; Reply Br. 13; Spec. ¶¶ 34–41, 90–95, 137, 150–162; *Alice*, 573 U.S. at 226; *OIP Techs., v. Amazon.com,* 788 F.3d 1359, 1363 (Fed. Cir. 2015) (claims reciting, inter alia, sending messages over a network, gathering statistics, using a computerized system to automatically determine an estimated outcome, and presenting offers found to merely recite "well-understood, routine conventional activities").

Accordingly, we agree with the Examiner that claim 1 is patent ineligible, as well as independent claim 21, not separately argued. *See* Final Act. 3; App. Br. 15, 22.

C. Dependent Claims

Appellants argue the Examiner's rejection of the dependent claims is in error, because the Examiner "fail[ed] to fully address the dependent claims in a written articulation of a rationale for rejection." App. Br. 23.

We are not persuaded of reversible error. Appellants present no substantive argument to show error in the Examiner's determination that the dependent claims "fail to remedy the deficiencies of their parent claims above considered individually and in ordered combination, and are therefore rejected for at least the same rationale as applied to their parent claims above, and incorporated herein." Final Act. 5. Nor do Appellants otherwise explain how the dependent limitations are meaningfully different from the independent claims for purposes of the *Alice* analysis. Based on the record before us, the Examiner has properly performed the § 101 analysis, and Appellants have been notified of the reasons for the rejection with such information "as may be useful in judging of the propriety of continuing the prosecution of [the] application," as required. *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (alteration in original) (quoting 35 U.S.C. § 132); s*ee also* Final Act. 5.

Accordingly, we are not persuaded the Examiner errs in rejecting dependent claims 2–20, 22, 23, and 25 under 35 U.S.C. § 101. *Cf. Internet Patents Corp. v. Active Network,* 790 F.3d 1343, 1349 (Fed. Cir. 2015) ("additional limitations of these dependent claims do not add an inventive

concept, for they represent merely generic data collection steps or siting the ineligible concept in a particular technological environment").

D. Reply Brief

As discussed above, we are not persuaded the Examiner's rejection is in error. *See* Final Act. 2–5. In the Answer, the Examiner responds to Appellants' Appeal Brief arguments, but does not issue new arguments or findings therein. *See* Ans. 2–9. Appellants raise new arguments in the Reply Brief; we have considered these arguments, and we do not find reason why they were not fairly raised in the Appeal Brief. *See* Reply Br. 1–23; *cf. In re Noznick*, 391 F.2d 946, 949 (CCPA 1968) (no new ground of rejection made when "explaining to appellants why their arguments were ineffective to overcome the rejection made by the examiner"). Appellants' Reply Brief arguments are therefore waived. *See* 37 C.F.R. § 41.41(b)(2) ("Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner's answer, . . . will not be considered by the Board for purposes of the present appeal, unless good cause is shown.").

DECISION

The Examiner's decision rejecting claims 1–23 and 25 is affirmed.

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