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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte CRAIG S. ETCHEGOYEN
_____

Appeal 2018-002359
Application 13/742,972
Technology Center 3600
_____

Before MURRIEL E. CRAWFORD, TARA L. HUTCHINGS, and
MATTHEW S. MEYER, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 from the
Examiner's final rejection of claims 1–10. We have jurisdiction under
35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant claims "network-based computer services and, more particularly, methods of and systems for accepting reports from anonymous reporters while tracking reputations of individual reporters." (Spec. ¶ 2.)

Claim 1 is representative of the subject matter on appeal.

1.   A method for managing reputations of anonymous sources of information, the method comprising:

generating, by a processor of a remotely located source device, a one-way identifier by performing a combination of operations on non-user-configurable data and user-configurable data specific to the remotely located source device;

receiving, at a server, information from an anonymous user via the remotely located source device through a computer network, wherein the information includes the one-way identifier;

deriving, by a processor of the server, reputation data regarding the remotely located source device that represents a measure of the veracity of information received from the remotely located source device from feedback received from other remotely located devices, wherein the feedback pertains to one or more items of information previously received from the remotely located source device; and

publishing, by a processor of the server, the information received from the remotely located source device and publishing, by a processor of the server, the reputation data regarding the remotely located source device.

THE REJECTION

Claims 1–10 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1–10 are rejected under pre-AIA 35 U.S.C. § 103(a) as being

unpatentable over Walker (US 5,884,272; Mar. 16, 1999) in view Johannsen

(US 2012/0215896 A1; Aug. 23, 2012) in further view of Shull

(US 2006/0212930 A1; Sept. 21, 2006).

ANALYSIS

35 U.S.C. § 101 REJECTION

> We will sustain the rejection of claims 1–10 under 35 U.S.C. § 101.

> The Supreme Court

> 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. First, . . .
> determine whether the claims at issue are directed to one of
> those patent-ineligible concepts. . . . If so, . . . then ask, "[w]hat
> else is there in the claims before us?" . . . To answer that
> question, . . . 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. . . . [The Court]
> described step two of this 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 Corp. v. CLS Bank Int'l, 573 U.S. 208, 217–18 (2014) (citing *Mayo*

Collaborative Servs. v. Prometheus Labs., Inc., 566 U.S. 66, 72–73 (2012))

(citations omitted).

To perform this test, we must first determine whether the claims at

issue are directed to a patent-ineligible concept. The Federal Circuit has

explained that "the 'directed to' inquiry applies a stage-one filter to claims,

considered in light of the [S]pecification, based on whether 'their character

as a whole is directed to excluded subject matter.'" *See Enfish, LLC v.*

Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an "abstract idea" for which computers are invoked merely as a tool. *See id.* at 1335–36.

In so doing we apply a "directed to" two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the judicial exception is integrated into a practical application. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Red. 50, 50–57 (Jan. 7, 2019) ("*Guidance*").

The Examiner determines that the claims are directed to "generating a one-way identifier by performing a combination of operations on non-user-configurable data and user-configurable data which is similar to concepts related to processing of organizing information found mentally abstract in 'Digitech.'" (Final Act. 2.) "[T]he claims are for a mental process (i.e., a process of organizing information and reputation data information)[,] which merely aids in associating and tracking reputational data with anonymous sources as opposed to computer efficacy." (Ans. 4.) The Examiner determines that the claimed process "only recites generating, receiving, and deriving the information and reputation data," without adding any meaningful limitation thereto. The publishing steps are limitations that add insignificant extra solution activity to the judicial exception, such as merely data transmitting in conjunction with the abstract ideas. (*Id.*).

The Specification discloses that systems by which individuals can report incidents benefit from protecting the anonymity of the reporting individuals, and is particularly true of whistle blowing systems in which

individuals are encouraged to report wrong-doing. Unless the whistleblower can remain anonymous, actual retribution can lead to costly legal proceedings and unnecessary demonstrations of hostility. (Spec. ¶ 3.) The Internet allows virtually anyone to write or report anything without being limited by facts or honesty and without requiring the reporter to reveal his or her identity. (*Id.* ¶ 4). What is needed is a way to evaluate and report reputations of anonymous reporters of information. (*Id.* ¶ 7.) The Specification, therefore, supports the Examiner's determination that the claims are directed to a mental process i.e., a process of organizing information through mathematical correlations.

Claim 1 recites "receiving . . . information from an anonymous user," "deriving . . . reputation data," "deriving . . . reputation data . . . that represents a measure of the veracity of information," and "publishing . . . reputation data." As such, claim 1 also supports the Examiner's determination that the claims are directed to a mental process, i.e., a process of organizing information through mathematical correlations.

The steps of claim 1 constitute "analyzing information by steps people go through in their minds, or by mathematical algorithms, which without more, is essentially mental processes within the abstract-idea category." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); s*ee also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (claims directed to certain arrangements involving contractual relations are directed to abstract ideas). We, thus, agree with the Examiner's determination that the claims are directed to a mental process which is a judicial exception. *Guidance*, 84 Fed. Reg. at 52.

Turning to the second prong of the "directed to test", claim 1 requires

"processors," a "server" and a "computer network." These recitations do not impose "a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception." *Guidance*, 84 Fed. Reg. at 53. We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in independent claim 1 invoke any inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) ("[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.").

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes any improvement in computer technology and/or functionality to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a "practical application," as that phrase is used in the revised Guidance. *See Guidance*, 84 Fed. Reg. at 55.

In this regard, the recitation does not affect an improvement in the functioning of the processors, servers, network or other technology, does not recite a particular machine or manufacture that is integral to the claims, and does not transform or reduce a particular article to a different state or thing. The Specification discloses that the server computer, for example, includes

one or more microprocessors that retrieve data and/or instructions from memory and execute retrieved instructions in a conventional manner which indicates that the computer is a generic computer. The Specification also discloses that the memory of the server computer can include generally any computer-readable medium including, for example, persistent memory such as magnetic and/or optical disks, ROM, and PROM and volatile memory such as RAM. The network is discloses as a wide area network, the Internet or a mobile device data network. (Spec. ¶ 52.) Thus, claim 1 is directed to a judicial exception that is not integrated into a practical application and, thus, is directed to an abstract idea.

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to an abstract idea, the claims must include an "inventive concept" in order to be patent-eligible, i.e., there must be an element or combination of elements that is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73).

The introduction of processors into the claims does not alter the analysis at *Alice* step two.

> [T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea "while adding the words 'apply it'" is not enough for patent eligibility. Nor is limiting the use of an abstract idea "'to a particular technological environment.'" Stating an abstract idea while adding the words "apply it with a computer" simply combines those two steps, with the same deficient result. Thus, if a patent's recitation of a computer amounts to a mere instruction to "implemen[t]" an abstract idea "on . . . a computer," that addition cannot impart patent eligibility. This conclusion accords with the pre-emption concern that undergirds our § 101 jurisprudence. Given the

7

> ubiquity of computers, wholly generic computer
> implementation is not generally the sort of "additional
> featur[e]" that provides any "practical assurance that the
> process is more than a drafting effort designed to monopolize
> the [abstract idea] itself."

Alice, 573 U.S. at 223 (alterations in original) (citations omitted).

Instead, "the relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer." *Id.* at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to retrieve, select, and apply decision criteria to data and modify the data as a result amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the trading industry. *See Elec. Power Grp.*, 830 F.3d at 1354*; see also In re Katz Interactive Call Processing Pat. Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) ("Absent a possible narrower construction of the terms 'processing,' 'receiving,' and 'storing,' . . . those functions can be achieved by any general purpose computer without special programming"). In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, "even if a process of collecting and analyzing information is 'limited to particular content' or a particular 'source,' that limitation does not make the collection and analysis other than abstract." *SAP Am., Inc. v. Investpic, LLC*, 890 F.3d 1016, 1022 (Fed. Cir. 2018).

8

Considered as an ordered combination, the computer components of Appellant's claims add nothing that is not already present when the steps are considered separately.

The claims do not, for example, purport to improve the functioning of the computer or network. As we stated above, the claims do not affect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios. (*See, e.g.*, Spec. ¶ 53.) Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract idea of organizing information through mathematical correlations using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 226.

We have reviewed all the arguments (Appeal Br. 13–18; Reply Br. 3–8) Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the claims provide a technological solution to a technological problem because the claims provide not only the transmission of substantive information but also information that can be used to associate and track reputational data with anonymous sources. (Appeal Br. 13–14.)

We agree with the Examiner's response to this argument found on page 4 of the Answer and adopt the same as our own. Specifically, we agree that given that the claims are for a mental process that merely aids in associating and tracking reputational data with anonymous sources as opposed to computer efficacy, there is no inventive concept that takes the claims beyond their abstract idea. Also, as noted above, even if a process of collecting and analyzing information is limited to particular content or a particular content, that limitation does not make the collection and analysis other than abstract.

We are not persuaded of error on the part of the Examiner by Appellant's argument, relying on *DDR*, that the claims recite a solution that is necessarily rooted in computer technology because the claims recite specialized computer software/hardware connections to generate complex one-way identifiers associated with source devices for transmission along with substantive information that can be utilized to generate reputational data. (Appeal Br. 14.)

This argument is not persuasive first because the Appellant has not explained where these specialized computer connections are recited in claim 1. In our view, claim 1 recites, and the Specification discloses, specifically in regard to the server processor, that the server retrieves instructions from memory and executes retrieved instructions in a conventional manner.

Second, we do not agree that the claims are analogous to the claims in *DDR*. In *DDR*, the Court evaluated the eligibility of claims "address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host's website after 'clicking' on an advertisement

and activating a hyperlink." *DDR*, 773 F.3d at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no "pre-Internet analog." *Id.* at 1258. The Court cautioned, however, "that not all claims purporting to address Internet-centric challenges are eligible for patent." *Id.* For example, in *DDR* the Court distinguished the patent-eligible claims at issue from claims found patent-ineligible in *Ultramercial*. *See DDR*, 773 F.3d at 1258–59 (citing *Ultramercial*, 772 F.3d at 715–16). As noted there, the *Ultramercial* claims were "directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before." *Id.* at 1258 (quoting *Ultramercial*, 772 F.3d at 715–16). Nevertheless, those claims were patent ineligible because they "merely recite[d] the abstract idea of 'offering media content in exchange for viewing an advertisement,' along with 'routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.'" *Id.*

Appellant's asserted claims are analogous to claims found ineligible in *Ultramercial* and distinct from claims found eligible in *DDR*. The ineligible claims in *Ultramercial* recited "providing [a] media product for sale at an Internet website;" "restricting general public access to said media product;" "receiving from the consumer a request to view [a] sponsor message;" and "if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query." *Ultramercial*, 772 F.3d at 712. Similarly, Appellant's asserted claims recite

11

receiving, analyzing, modifying, and transmitting data. This is precisely the type of Internet activity found ineligible in *Ultramercial*.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the claims are like the claims in *Amdocs* (*Israel*) *Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016). (Appeal Br. 17; Reply Br. 7–8.) In *Amdocs*, the court held that "[claim 1] is eligible under step two because it contains a sufficient 'inventive concept.'" *Amdocs*, 841 F.3d at 1300. The claim at issue recited "computer code for using the accounting information with which the first network accounting record is correlated to enhance the first network accounting record." *Id.* The court explained that the "claim entails an unconventional technological solution (enhancing data in a distributed fashion) to a technological problem (massive record flows [that] previously required massive databases)." *Id.* The court noted that, although the solution requires generic computer components, "the claim's enhancing limitation necessarily requires that these generic components operate in an unconventional manner to achieve an improvement in computer functionality." *Id.* at 1300–01. When determining that the claim was patent eligible, the Federal Circuit explained that the "enhancing limitation necessarily involves the arguably generic gatherers, network devices, and other components working in an unconventional distributed fashion to solve a particular technological problem." *Id.* at 1301. The court distinguished the claim from the claims held unpatentable on the grounds that the "enhancing limitation . . . necessarily incorporates the invention's distributed architecture—an architecture providing a technological solution to a technological problem." *Amdocs*, 841 F.3d at 1301 (citations omitted).

But unlike the generic components at issue in *Amdocs*, the generic components recited in claim 1 here do not operate in an unconventional manner to achieve an improvement in computer functionality. Rather, they merely receive, process and display data, which are basic computer functions. *See Inventor Holdings*, 876 F.3d at 1378 (citation omitted) (holding that considering claims reciting data retrieval, analysis, modification, generation, display, and transmission as an "ordered combination" reveals that they "'amount to "nothing significantly more" than an instruction to apply [an] abstract idea' using generic computer technology").

In view of the foregoing, we will sustain the Examiner's rejection of claim 1. We will also sustain the rejection as it is directed to the remaining claims because Appellant has not argued the separate eligibility of these claims.

REJECTION UNDER 35 U.S.C. § 103(a)

We will not sustain this rejection because we agree with Appellant that the prior art does not disclose deriving reputation data regarding a remotely located source device that represents a measure of veracity of information based on "information [previously] received from the remotely located source device." The Examiner relies on Schull at paragraphs 37–38, 50–52, and 72–77 for teaching this subject matter. (Final Act. 9.)

We find that Schull discloses that trust scores may be provided to third parties to allow those third parties to make determinations about the trustworthiness of the online entity based on information previously received from the entity. (Schull ¶ 37.) The trust scores are calculated based on

information stored in one or more databases that can be used to provide records, experience and/or other information about the ownership, relationship, historical, and/or behavior attributes of the entities. The databases are used to determine associations between online entities and illicit behaviors such as phishing, unwanted spam, fraudulent sales etc. (*id.* ¶ 38). Schull, however, does not disclose that trust scores are a measure of veracity. Rather, the trust scores in Schull are a measure of illicit activities of the entity not on the veracity of information previously received from the entity.

In view of the foregoing, we will not sustain the Examiner's rejection under 35 U.S.C. § 103(a) of claim 1 and claims 2–4 dependent therefrom. We will also not sustain the rejection as it is directed to the remaining claims for the same reason.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1–10 under 35 U.S.C. § 101.

We conclude the Examiner did err in rejecting claims 1–10 under 35 U.S.C. § 103(a).

DECISION

The decision of the Examiner to reject claims 1–10 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED