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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL C. HEUMANN and KEITH COOLEY

Appeal 2018-003511
Application 11/692,169¹
Technology Center 2100

Before MARC S. HOFF, ELENI MANTIS MERCADER, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

DEJMEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1, 3–6, 9–11, 13–17, and 21–28. Appellants have canceled claims 2, 7, 8, 12, and 18–20. Amend. 2–5 (filed July 5, 2016). We have jurisdiction over the remaining pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify Chartoleaux KG Limited Liability Company as the real party in interest. App. Br. 2.

STATEMENT OF THE CASE

Introduction

Appellants' disclosed and claimed invention generally relates to "organizing and displaying information." App. Br. 8. More specifically, Appellants describe receiving items of information into a database, further collecting ratings and/or comments associated with the items, and allowing users to access and sort the items of information based on selected rating criteria. Spec. ¶ 18.

Claim 1 is representative of the subject matter on appeal and is reproduced below with the disputed limitation emphasized in *italics*:

1. A method comprising:

a computer system receiving, via a network accessible to a plurality of users, at least one item of information;

the computer system storing the at least one item of information in a database accessible via the network;

the computer system receiving, via the network and from the plurality of users, comments associated with the at least one item of information;

the computer system categorizing the received comments into a plurality of comment categories, wherein the plurality of comment categories includes at least a positive comment category and a negative comment category;

the computer system receiving, via the network and from the plurality of users, feedback responsive to the comments within respective comment categories; and

the computer system providing, via the network and in response to a request of a first user of the plurality of users, graphic display information usable to separately display at least the positive comment category and the negative comment category at a common point in time, wherein the positive comment category and the negative comment category each include a plurality of the categorized comments ordered within

the respective comment category, wherein the ordering is based at least in part on feedback from one or more users that are different from the first user.

The Examiner's Rejections

1. Claims 1, 3–6, 9–11, 13–17, and 21–28 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 3–6.
2. Claims 1, 3, 5, 6, 11, 13, 15, 17, and 21–28 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Letter from Benjamin Franklin to Joseph Priestley (September 19, 1772) (“Franklin”) and Ng (US 6,405,175 B1; June 11, 2002). Final Act. 6–10.
3. Claims 4, 14, and 16 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Franklin, Ng, and Lang et al. (US 5,867,799; Feb. 2, 1999) (“Lang”). Final Act. 10–11.
4. Claims 9 and 10 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Franklin, Ng, and Ginn (US 6,362,837 B1; Mar. 26, 2002). Final Act. 11–12.

ANALYSIS²

Rejection under 35 U.S.C. § 101

Appellants dispute the Examiner’s conclusion that the pending claims are directed to patent-ineligible subject matter. App. Br. 8–14; Reply Br. 2–

² Throughout this Decision, we have considered the Appeal Brief, filed May 11, 2017 (“App. Br.”); the Reply Brief, filed February 14, 2018 (“Reply Br.”); the Examiner’s Answer, mailed December 14, 2017 (“Ans.”); and the Final Office Action, mailed August 12, 2016 (“Final Act.”), from which this Appeal is taken.

5. In particular, Appellants argue the Examiner “heavily generalize[s] the claimed subject matter” in identifying the alleged abstract idea. App. Br. 10. Rather, Appellants assert the claims do not capture a computerized pros and cons list, “but rather recites a specific manner for organizing and displaying information received from a plurality of users over a computer network.” App. Br. 10; Reply Br. 2–3. Appellants contend the claims are directed to “an improvement to the technical field of organizing and displaying information.” App. Br. 11; *see also* Reply Br. 3–4 (noting claims directed to a specific manner of displaying information to a user, rather than using conventional interface methods to display a generic index on a computer were held patent eligible in *Core Wireless S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1363 (Fed. Cir. 2018)). More specifically, Appellants assert the claimed solution is necessarily rooted in computer technology in order to overcome a problem arising in the realm of computer networks. App. Br. 12 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014)). Moreover, Appellants contend the claims recite significantly more than the alleged abstract idea. App. Br. 13–14.

The Supreme Court’s two-step framework guides our analysis of patent eligibility under 35 U.S.C. § 101. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture, or composition of matter) then the first inquiry is whether the claim is directed to one of the judicially recognized exceptions (i.e., a law of nature, a natural phenomenon, or an abstract idea). *Alice*, 573 U.S. at 217. If so, the second step is to determine whether any element, or combination of elements,

amounts to significantly more than the judicial exception. *Alice*, 573 U.S. at 217.

Although the independent claims each broadly fall within the statutory categories of patentability, the Examiner concludes the claims are directed to a judicially recognized exception—i.e., an abstract idea. Final Act. 3–4. In particular, the Examiner concludes the claims are directed to the abstract idea of “creating a list of pros and cons, and then ordering those pros and cons based on feedback from other people.” Final Act. 3. Further, the Examiner concludes the claims do not recite significantly more to transform the abstract idea into a patent-eligible application. Final Act. 4–5. The Examiner also determines the claims do not recite any inventive concept such as improving the performance of a computer or any other technology. Final Act. 5.

Instead of using a definition of an abstract idea, “the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.” *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)); accord United States Patent and Trademark Office, July 2015 Update: Subject Matter Eligibility 3 (July 30, 2015), <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf> (instructing Examiners that “a claimed concept is not identified as an abstract idea unless it is similar to at least one concept that the courts have identified as an abstract idea”). As part of this inquiry, we must “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded

subject matter.” *Affinity Labs of Tex., LLC v. DirecTV, LLC*, 838 F.3d 1253, 1257–58 (Fed. Cir. 2016) (citations omitted).

Our reviewing court has concluded that abstract ideas include the concepts such as the collection and analysis of information. *Elec. Power*, 830 F.3d at 1353. Additionally, the collecting of data, recognizing certain data within the collected data set, and storing the data in memory are also abstract ideas. *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). Similarly, “collecting, displaying, and manipulating data” is an abstract idea. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017); *see also SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (“merely presenting the results of abstract processes of collecting and analyzing information . . . is abstract as an ancillary part of such collection and analysis” (citation omitted)). Moreover, “a process of organizing information through mathematical correlations and is not tied to a specific structure or machine” is abstract. *Digitech Image Techs., LLC v. Elec. for Imaging, Inc.*, 758 F.3d 1344, 1350 (Fed. Cir. 2014).

Further, merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea (math) to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas).

Here, Appellants’ claims are generally directed to the collection, organization, and display of information. This is consistent with Appellants’

own characterization of the claims. *See* App. Br. 8 (asserting the application addresses the issue of “organizing and displaying information”); App. Br. 10 (“[c]laim 1 . . . recites a specific manner for organizing and displaying information”); *see also* Reply Br. 4. The claimed information (e.g., comments and feedback responsive to comments) is received by a computer system from a plurality of users. The received information is categorized into positive and negative categories. Further, the comments are ordered within their respective categories based at least in part on feedback received for those comments. Upon request, the ordered list of comments may be presented (i.e., displayed) to a user.

Similar to the collection and analysis of data in *Electric Power*, the pending claims receive data supplied by a plurality of users, store the data, and analyze the received data for further processing (i.e., categorization). *See Elec. Power*, 830 F.3d at 1354; *see also Content Extraction*, 776 F.3d at 1347; *Smart Sys. Innovations, LLC v. Chicago Transit Authority*, 873 F.3d 1364, 1372 (Fed. Cir. 2017). Further, the categorization and ordering of data is similar to the abstract ideas of manipulating and organizing data. *See Elec. Power*, 830 F.3d at 1354; *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (holding “classifying and storing digital images in an organized manner” to be abstract); *Intellectual Ventures*, 850 F.3d at 1340. Further, in *Electric Power* the court concluded that “merely presenting the results of abstract processes of collecting and analyzing information . . . is abstract as an ancillary part of such collection and analysis.” *Elec. Power*, 830 F.3d at 1354. Thus, similar to *Electric Power*, we find Appellants’ display of the ordered, categorized data to also be abstract. Neither these steps, nor those recited in the dependent claims (as

discussed by the Examiner (*see* Final Act. 5–6)) alter the character of the claims, which are directed to an abstract idea, discussed *supra*.

Additionally, here—as in *Electric Power* (*see* 830 F.3d at 1354)—the claims are distinguishable from the claims at issue in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), because “the focus of the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *Elec. Power*, 830 F.3d at 1354. Further, Appellants’ reliance on *Core Wireless* (*see* Reply Br. 3–4) is also unavailing. In *Core Wireless*, the court concluded the claims were not directed to an abstract idea, but rather were “directed to an improved user interface for computing devices.” *Core Wireless*, 880 F.3d at 1362. The court noted that “[a]lthough the generic idea of summarizing information certainly existed prior to the invention, . . . these claims recite a specific improvement over prior systems.” *Core Wireless*, 880 F.3d at 1362–63. As discussed above, the claims do not recite an improvement over the prior art, but rather organize and display the received data.

Because we determine the claims are directed to an abstract idea or combination of abstract ideas, we analyze the claims under step two of *Alice* to determine if there are additional limitations that individually, or as an ordered combination, ensure the claims amount to “significantly more” than the abstract idea. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73, 77–79 (2012)). The implementation of the abstract idea involved must be “more than [the] performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction*, 776 F.3d at 1347–48 (alteration in original) (quoting *Alice*, 573 U.S. at 225).

Appellants generally assert the claims “recite features ‘significantly more’ than th[e] alleged abstract idea,” but fail to specifically identify what that is. App. Br. 14. To the extent Appellants argue the claims are patent eligible because “a computer system and computer network would be required for all but the most fanciful uses of the claimed subject matter,” we disagree. Reply Br. 5. As explained in *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015), “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *See also Alice*, 573 U.S. at 224 (“use of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions” is not an inventive concept); *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (a computer “employed only for its most basic function . . . does not impose meaningful limits on the scope of those claims”). Further, unlike the claims at issue in *DDR Holdings*, Appellants’ claims rely on a “computer network operating in its normal, expected manner.” *DDR Holdings*, 773 F.3d at 1258–59; *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.”).

Appellants’ argument that the claims possess an inventive concept because they “are both novel and nonobvious over the prior art” is also unavailing. App. Br. 14. Subject-matter eligibility under 35 U.S.C. § 101 is a requirement separate from other patentability inquiries. *See Mayo*, 566 U.S. at 90 (recognizing that the § 101 inquiry and other patentability inquiries “might sometimes overlap,” but that “shift[ing] the patent-

eligibility inquiry entirely to these [other] sections risks creating significantly greater legal uncertainty, while assuming that those sections can do work that they are not equipped to do”); *see also Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”); *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017) (“Eligibility and novelty are separate inquiries.”).

To the extent Appellants contend the Examiner did not conduct a preemption analysis and that the claims are not preemptive (*see* App. Br. 13) of the abstract idea, we are unpersuaded of Examiner error. “[W]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *FairWarning IP*, 839 F.3d at 1098 (quoting *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)); *see also OIP Techs.*, 788 F.3d at 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”). Further, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa*, 788 F.3d at 1379.

For the reasons discussed *supra*, we are unpersuaded that the Examiner erred in rejecting under 35 U.S.C. § 101 claim 1 as being directed to patent-ineligible subject matter. Accordingly, we sustain the Examiner’s rejection of claim 1. Additionally, we sustain the Examiner’s rejection of

independent claims 11 and 21, which recite similar limitations and were not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2016). Further, we sustain the Examiner’s rejection of claims 3–6, 9, 10, 13–17, and 22–28, which depend directly or indirectly therefrom and were not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejections under pre-AIA 35 U.S.C. § 103(a)

In rejecting claim 1, *inter alia*, the Examiner relies on the combined teachings of Franklin and Ng. Final Act. 6–8. We begin our analysis with a brief review of the references.

Franklin is a letter from Benjamin Franklin to Joseph Priestley, dated September 19, 1772, wherein Franklin describes an approach for making a decision. Franklin 1. In particular, Franklin describes creating a column of Pros and a column of Cons on a sheet of paper and listing various attributes under the appropriate heading. Franklin 1. Franklin further describes that, after a period of reflection, he makes a determination if the relative of weight(s) of one or more attributes in one column (e.g., Pros) effectively cancels the relative weight(s) of one or more attributes on the other side of the ledger (e.g., Cons). Franklin 1. If so, those attributes are stricken. Franklin 1. Thus, Franklin teaches, after such an exercise, it may be apparent “where the Ballance lies” and a determination may be reached. Franklin 1. Franklin describes this approach as “Moral or Prudential Algebra.” Franklin 1.

Ng is generally directed to a customer rewards program wherein customers are rewarded by providing and correcting product and price information. Ng, col. 1, ll. 10–12; col. 4, ll. 51–53. Ng recognizes an issue

exists, however, when such information (e.g., product reviews or pricing information) is readily searchable. Ng, col. 2, l. 57–col. 3, l. 7. Thus, Ng describes “a web site and service with a searchable database of products and price information.” Ng, col. 3, ll. 8–9. The searchable database is populated with information provided by a plurality of users. Ng, col. 3, ll. 23–24.

Additionally, Ng discloses:

Some web sites are being created to collect product reviews and opinions from users. User opinion site **26** encourages users to leave product reviews by promising rewards for the reviewers based on the usefulness of the advice. Other readers vote on the quality of the product reviews, and the results used to rank the reviews.

Ng, col. 2, ll. 51–56.

The Examiner relies on Franklin to teach: (i) “receiving comments associated with the at least one item of information;” (ii) “categorizing the received comments into a plurality of comment categories . . . includ[ing] at least a positive comment category and a negative comment category;” (iii) “receiving feedback responsive to the comments within respective comment categories;” and (iv) “providing graphic display information usable to separately display at least the positive comment category and the negative comment category at a common point in time, where . . . the categorized comments [are] ordered within the respective comment category.” Final Act. 6–7. The Examiner relies on Ng to teach “some websites collect product reviews from users, other users are able to vote on the quality of the product reviews, and the results are used to rank the reviews.” Final Act. 8. The Examiner determines one of ordinary skill in the art would have been motivated to combine the teachings of Franklin and

Ng “to help users come to a decision for or against purchasing a product online.” Final Act. 8.

Appellants assert “Franklin does not contemplate soliciting comments from others, much less feedback responsive to the comments.” App. Br. 16–17. Further, Appellants contend Franklin does not teach displaying the categorized comments ordered within the respective comment category because Franklin teaches removing entries deemed to offset each other from the categories. App. Br. 17.

Absent any substantive response by the Examiner to these arguments, we are persuaded of Examiner error. Although the combination of cited references may teach the recited limitations of claim 1, we agree with Appellants that the Examiner’s reliance on Franklin to teach many of these limitations is misplaced. Rather, it would appear that Ng teaches receiving a comments associated with a product (i.e., an item of information stored in a database of an on-line retailer) from a plurality of users and further receiving feedback responsive to the comments from a plurality of users.³ *See* Ng, col. 2, ll. 51–56.

Because we find it dispositive that Franklin, as relied on by the Examiner, does not teach receiving comments (or feedback responsive to the comments) from a plurality of users, as required by independent claims 1, 11, and 21, we need not address other issues raised by Appellants’ arguments.

³ Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See* Manual of Patent Examining Procedure (MPEP) § 1213.02 (9th ed. Rev. 08.2017, Jan. 2018).

For the reasons discussed *supra*, and constrained by the evidence of record before us, we do not sustain the Examiner's rejection of claim 1. For similar reasons, we do not sustain the Examiner's rejection of independent claims 11 and 21, which recite similar limitations and for which the Examiner makes similar findings. *See* Final Act. 9. Additionally, we do not sustain the Examiner's rejections of claims 3–6, 9, 10, 13–17, and 22–28, which depend directly or indirectly therefrom.

DECISION

We affirm the Examiner's decision rejecting claims 1, 3–6, 9–11, 13–17, and 21–28 under 35 U.S.C. § 101.

We reverse the Examiner's decision rejecting claims 1, 3–6, 9–11, 13–17, and 21–28 under pre-AIA 35 U.S.C. § 103(a).

Because we affirm at least one ground of rejection with respect to each claim on appeal, the Examiner's decision rejecting claims 1, 3–6, 9–11, 13–17, and 21–28 is affirmed. *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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED