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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID STANASOLOVICH, GYAN PRAKASH, JESSE
WALKER, and JAMES GREGG

Appeal 2018-003577
Application 13/977,204
Technology Center 3600

Before JOHN A. JEFFERY, JENNIFER L. McKEOWN, and
LINZY T. McCARTNEY, *Administrative Patent Judges*.

McKEOWN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's decision to reject claims 69–73, 75–82, and 84–93. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is Intel Corporation. App. Br. 2.

STATEMENT OF THE CASE

Appellants' disclosed and claimed invention generally relates to

A device, method, and system for generating online social community profiles includes collecting behavioral characteristics of community members of an online social community and aggregating the behavioral characteristics to generate a social community profile for the online social community. The social community profile may be used to elicit proposals from vendors, which may be voted on or responded to by the community members of the online social community.

Abstract.

Claim 69 is illustrative of the claimed invention and reads as follows:

69. An online community profile server comprising:
a processor;
a memory coupled to the processor;
a behavioral characteristic logic unit stored in the memory and executed by the processor from the memory, wherein the behavioral characteristic logic unit is to:
present, to a sub-group of a plurality of community members of an online social community, a form listing a plurality of available behavioral characteristics to track;
receive, from the sub-group, the form indicating a plurality of selected behavioral characteristics from the plurality of available behavioral characteristics to track, wherein the plurality of selected behavioral characteristics is indicative of which behavioral characteristics are desired to be tracked; and
collect, based on the plurality of selected behavioral characteristics and subsequent to receipt of the form from the sub-group, individual group member behavioral characteristics of the plurality of community members of the online social community, wherein the individual group member behavioral characteristics comprise individual group member economic behavioral characteristics;
an online social community profile logic unit stored in the memory and executed by the processor from the memory, wherein the online social community profile logic unit is to
(i) aggregate the individual group member behavioral

characteristics of the plurality of community members and (ii) generate a social community profile as a function of the aggregated individual group member behavioral characteristics of the plurality of community members; and

a vendor presentation logic unit stored in the memory and executed by the processor from the memory, wherein the vendor presentation logic unit is to (i) allow access to the social community profile by a vendor, (ii) receive a proposal from the vendor in response to the social community profile, and (iii) determine a community response to the proposal received from the vendor.

THE REJECTIONS

The Examiner rejected claims 69–73, 75–82, and 84–93 under U.S.C. § 101 as directed to patent ineligible subject matter. Final Act. 3–7.

The Examiner rejected claims 69–71, 75–77, 79–81, 84–87, and 89–93 under U.S.C. § 103 as unpatentable over Hillerbrand et al. (US 2010/0262477 A1, published Oct. 14, 2010) (“Hillerbrand”), and Erhart et al. (US 2011/0276513 A1, published Nov. 10, 2011) (“Erhart”). Final Act. 7–8.

The Examiner rejected claims 72–73 and 82 under U.S.C. § 103 as unpatentable over Hillerbrand, Erhart, and Goldstein (US 2001/0032115 A1, published Oct. 18, 2001). Final Act. 48–51.

The Examiner rejected claims 78 and 88 under U.S.C. § 103 as unpatentable over Hillerbrand, Erhart, and Tietzen et al. (US 2011/0112897 A1, published May 12, 2011) (“Tietzen”). Final Act. 51–54.

ANALYSIS

THE § 101 REJECTION

Claims 69–73, 75–82, and 84–93

Based on the record before us, we are not persuaded that the Examiner erred in rejecting claims 69–73, 75–82, and 84–93 as directed to patent ineligible subject matter.

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citation omitted).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and

mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. (15 How.) 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 176; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., Diehr*, 450 U.S. at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (citation omitted). “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].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of section 101. USPTO’s 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Memorandum”). Under that guidance, we first look to whether the claim recites:

- (1) 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) additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08. 2017, Jan. 2018)).

See Memorandum, 84 Fed. Reg. at 52, 55–56. Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then 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, 84 Fed. Reg. at 56.

Examiner’s Findings and Conclusion

Under step one of the *Alice* test, the Examiner determines that the claimed invention “is directed to the monitoring and analysis of online social media interactions through questionnaires in order to provide vendors with information relating to the people in a social media community.” The Examiner further determines that this claimed concept is analogous to the claimed concepts of *Electric Power Group, LLC, v. Alstom*, 830 F.3d 1350 (Fed. Cir. 2016) and *CyberSource Corporation v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011). Final Act. 3.

Under step two of the *Alice* test, the Examiner determines that the additional limitations do not add significantly more to the claimed abstract idea. Final Act. 4–5. For example, the Examiner determines:

The method and system, as claimed by the applicant, is no more than a general linking of the use of the abstract idea (an idea of itself) to a particular technological environment (the use of computers to calculate and transmit data). The recitation of well-known computer functions does not meet the “significantly more” threshold.

Final Act. 4 (emphasis omitted) (citing Spec. ¶¶ 13–15).

Appellants’ Contentions

Appellants argue that the claimed invention is not abstract because the claimed invention “as a whole . . . [is] directed to an improved online tracking process.” App. Br. 11. Appellants maintain that “an online social network is necessarily rooted in computer technology” and that the claimed invention “is clearly directed to a technical improvement on the technical function of the server. App. Br. 11–12. Further, Appellants assert that the

claimed invention addresses a specific problem arising in the realm of computer networks, namely privacy and “performing online surveys without unwanted interference, such as ballot stuffing.” App. Br. 12–14.

Analysis – Revised Step 2A

Under the Memorandum, in prong one of step 2A we look to whether the claims recite a judicial exception. The claims recite “a behavioral characteristic logic unit” that “present[s], to a sub-group of. . . members of an online social community, a form listing a plurality of available behavioral characteristics to track,” “receive[s]. . . the form indicating [] selected behavioral characteristics. . . , wherein the [] selected behavioral characteristics is indicative of which behavioral characteristics are desired to be tracked,” and “collect[s], based on the [] selected behavioral characteristics. . . , individual group member behavioral characteristics. . . , wherein the individual group member behavioral characteristics comprise individual group member economic behavioral characteristics;” “an online social community profile logic unit” that “(i) aggregate[s] the individual group member behavioral characteristics of the plurality of community members and (ii) generate[s] a social community profile as a function of the aggregated individual group member behavioral characteristics of the plurality of community members;” and “a vendor presentation logic unit” that “(ii) receive[s] a proposal from the vendor in response to the social community profile, and (iii) determine[s] a community response to the proposal received from the vendor.”

At a high level, these claimed steps provide for a sub-group selecting behavioral characteristics to track, collecting the selected behavioral characteristics, aggregating the collected information and generating a group

profile, receiving an offer from a vendor based on the profile and determining a community response to the proposal. These limitations recite certain methods of organizing human activity as they track behaviors of a group of individuals. Further, these limitations are commercial interactions, such as marketing or sales activities, since the collected information is “economic behavioral characteristics” and a vendor uses this information to provide a proposal, such as a coupon, advertisement, questionnaire, or marketing poll. *See* Spec. 5, ll. 20–27. As such, the claimed invention recites certain methods of organizing human activity, and thus is an abstract idea. *See also Intellectual Ventures I LLC v. Capital One Bank*, 792 F.3d 1363 (Fed. Cir. 2015) (finding that “tracking financial transactions to determine whether they exceed a pre-set spending limit (i.e., budgeting)” is a method of organizing human activity and, thus, an abstract idea).

Under prong two of revised step 2A, we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.

We are not persuaded that the claimed abstract idea is integrated into a practical application. The claimed invention additionally recites a processor, a memory, and a vendor presentation logic unit that “allow[s] access to the social community profile by a vendor.” As the Examiner determines, the claimed invention is not:

- 1) improving another technology, 2) improving the functioning of the computer itself, 3) Applying the judicial exception with, or by use of, a particular machine, 4) Effecting a transformation

or reduction of a particular article to a different state or thing, 5) Adding a specific limitation other than what is well-understood, routine and conventional in the field, or adding unconventional steps that confine the claim to a particular useful application, or 6) Other meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment.

Final Act. 4.

We disagree with Appellants that the claimed invention is directed to an internet centric problem or that the claimed invention is rooted in computer technology. *See* App. Br. 12–14. Notably, Appellants fail to identify how the tracking process is improved. Instead, the claimed invention merely limits the tracking information to only the selected behavioral characteristics. While this limited scope may benefit the vendor in providing more targeted information, the claimed invention does not describe any *technical* improvement in collecting or analyzing of the data or the prior art tracking process. *Compare* App. Br. 13 (describing the alleged improvement as “allowing the users of a social network to determine what is tracked”), *with Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) (finding claims eligible because they “solve[d] a *technological* problem”) (emphasis added); *see also* Ans. 5–6. Moreover, Appellants note privacy concerns, but fail to address how these are internet-centric issues or how the claimed invention provides a technical improvement to resolve them. *See* Ans. 5–6

Appellants likewise fail to explain sufficiently how the claimed invention is “rooted in computer technology.” The “participation” of a computer, for example through use of an online network, is insufficient because “the mere recitation of a generic computer cannot transform a

patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 223. Instead, the claimed invention here merely uses a computer as a tool to implement the claimed online tracking system. *See, e.g.*, MPEP § 2106.05(f).

We further note that the step of providing access to the group profile is merely insignificant extra-solution activity. The claimed invention receives, processes, and displays data – this is merely conventional data gathering and analysis. *See* MPEP § 2106.05(g); *OIP Techs., Inc., v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *Electric Power Group LLC*, 830 F.3d at 1354. As such, based on the record before us, we determine that the claimed invention is not integrated into a practical application.

Analysis – Step 2B

We agree with the Examiner that the additional limitations are not sufficient to amount to significantly more than the abstract idea. *See* Final Act. 4. Namely, as the Examiner explains “[t]he application of computer technology in the . . . [claimed invention] is merely routine and conventional.” Final Act. 4; *see also id.* (citing Spec. ¶¶ 13–15); *Electric Power Group LLC*, 830 F.3d at 1354 (finding that use of “conventional computer, network, and display technology for gathering, sending, and presenting the desired information” does not add significantly more to the claimed abstract idea); *Content Extraction and Transmission, LLC v. Wells Fargo Bank*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (discussing that data collection, recognition, and storage is well-known); *CyberSource*, 654 F.3d at 1375 (“[T]he incidental use of a computer to perform the [claimed

process] does not impose a sufficiently meaningful limitation on the claim's scope.”).

Moreover, we note that the step of providing access to a group profile is merely insignificant extra-solution activity. Namely, the claimed invention receives, processes, and displays data – this is merely conventional data gathering and analysis. *See* MPEP § 2106.05(g); *OIP Techs., Inc.*, 788 F.3d at 1363; *Electric Power Group*, 830 F.3d at 1354.

Accordingly, based on the record before us, we are not persuaded of error in the Examiner's conclusion that the appealed claims are directed to patent ineligible subject matter. Therefore, we affirm the Examiner's decision to reject claims as directed to patent ineligible subject matter.

THE § 103 REJECTION BASED ON HILLERBRAND AND ERHART
Claims 69–71, 75–77, 79–81, 84–87, and 89–93

Based on the record before us, we are persuaded that the Examiner erred in rejecting claims 69–71, 75–77, 79–81, 84–87, and 89–93 as unpatentable over Hillerbrand and Erhart.

Appellants argue that Hillerbrand does not teach or suggest a sub-group selecting behavioral characteristics to be tracked then subsequently tracking those selected behavioral characteristics for all individual members of the group. App. Br. 16–17. In particular, Appellants explain “Hillerbrand generally describe[s] capturing information relating to users and how that information is used, but does not disclose anything related to a sub-group of a community choosing which information is to be tracked.” App. Br. 16–17.

We agree. The Examiner appears to rely on Hillerbrand's teaching of a customized catalog as teaching a sub-group selecting behavioral

characteristics to track for a group. *See* Ans. 7–9. For example, the Examiner finds that Hillerbrand teaches:

that a user of the system can select specific portions of the catalogue to follow or be tracked. This section also teaches that when another use of the catalogue changes a portion of the catalogue through selection of materials to track, the change is reflected in all the user's catalogues.

Ans. 9. The Examiner further explains that:

A[n] indication is given by an individual user (here the user is a sub-group of the entirety of the users) as to what the user would like to track such as a person (such as a celebrity or other person of interest) or a category (such as food or cars or even a particular make or model of a car). By selecting this particular information to track, it is then added to the user's catalog of items to track and receive information about. Additionally, this information is added to the catalog as a whole which then allows other users to select the same categories to track. In this way the user in the sub-group is selecting what material can be tracked by the entire user base by modifying and expanding the catalog of information.

Ans. 9. While we recognize that a user may select items to track by the customized catalogue experience, this does not teach or suggest the claimed sub-group selecting behavioral characteristics to track for the whole group. While the Examiner notes that other users can select the same categories, this is distinct from the claimed limitation. As Appellants additionally point out:

While the use of catalogs may disclose a general way for users to customize their experience, mere disclosure of a customized experience is not the same as a sub-group of the community selecting behavioral characteristics that are desired to be tracked. Additionally, Appellant finds nothing related to catalogs that disclose that a sub-group of the community performs

customization of any kind for all individual members of the group.

App. Br. 17 (emphasis omitted). As such, we are persuaded that the Examiner erred in finding that Hillerbrand and Erhart combined, teach the disputed limitations.

Accordingly, based on the record before us, we reverse the Examiner's decision to reject claims 69–71, 75–77, 79–81, 84–87, and 89–93 as unpatentable over Hillerbrand and Erhart.

THE REMAINING §103 REJECTIONS

Claims 72, 73, 78, 82 and 88

As discussed above, we are persuaded that the Examiner erred in rejecting independent claims 69, 80 and 91 as unpatentable over Hillerbrand and Erhart. The additionally cited references of Goldstein and Tietzen do not cure the deficiencies. As such, we are similarly persuaded that the Examiner erred in the remaining obviousness rejections and reverse the Examiner's rejections of claims 72, 73, 78, 82 and 88 as obvious.

DECISION

We affirm the Examiner's decision to reject claims 69–73, 75–82, and 84–93 as directed to patent ineligible subject matter, but reverse the Examiner's decision to reject claims 69–73, 75–82, and 84–93 as unpatentable over the cited combinations of prior art.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED