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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DIYA B. OBEID

Appeal 2018-003794
Application 13/659,791¹
Technology Center 2400

Before JAMES R. HUGHES, ERIC S. FRAHM, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–22, which are all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to the Appeal Brief, the real party in interest is JOBDIVA, INC. App. Br. 3.

STATEMENT OF THE CASE

Introduction

Appellant's application relates to creating a social network among resume owners by parsing resumes and identifying a shared network identifier. *See Spec.* ¶ 64. For example, an overlap in time of employment of people by the same employer will lead to creating a network identified by that employer for that time period. *See Spec.* ¶¶ 40–48. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method implemented on a server computer system, comprising:

receiving a resume for a resume owner, wherein the resume is a narrative that describes the resume owner's background and experiences, wherein the resume owner is a candidate for employment, wherein the resume includes content, wherein the content comprises skill or experience-related phrases, and wherein the skill or experience-related phrases include at least one entity;

robotically parsing the resume to:

obtain an identity of the resume owner;

obtain a network identifier for each said at least one entity in the resume; and

determine a time period of a relationship between the resume owner and each said at least one entity by examining a contextual use of said at least one entity in the resume, the time period having a start time and an end time;

creating a parsed resume that includes the identity of the resume owner in the resume, the network identifier for each said at least one entity in the resume, and the time period in the

resume of the relationship between the resume owner and each said at least one entity;

identifying the network identifier for each said at least one entity in the resume that is a shared network identifier, wherein the time period of the relationship between the resume owner and said at least one entity associated with the shared network identifier overlaps with a known time period of a known relationship between another resume owner and said at least one entity associated with the shared network identifier; and

creating a social network for the shared network identifier, wherein members of the social network include the resume owner and the other resume owner.

The Examiner's Rejections

Claims 1–22 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.²

Claims 1–4, 6–9, 11–14, 16–20, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McGovern (US 2009/0228297 A1; Sept. 10, 2009), Ehrlich (US 2008/0208671 A1; Aug. 28, 2008), and Blue (US 2007/0245245 A1; Oct. 18, 2007).

Claims 5, 10, 15, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McGovern, Ehrlich, Blue, and Work (US 8,010,460 B2; Aug. 30, 2011).

² The Examiner entered a new ground of rejection under § 101 in the Answer with the approval of the Technology Center Director. Ans. 3, 12.

ANALYSIS

Patent-Ineligible Subject Matter

Appellant argues all the rejected claims together as a single group. *See* Reply Br. 2–11. We select independent claim 1 as representative of all claims in our analysis below. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws 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 *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). In *Alice*, the Supreme Court reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S.Ct. at 2355.

First, assuming that a claim nominally falls within one of the statutory categories of machine, manufacture, process, or composition of matter, we must “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57.

Second, if the claim is directed to a judicial exception, such as an abstract idea, we must determine whether additional elements in the claim

“‘transform the nature of the claim’ into a patent-eligible application.” *Id.* at 2355 (quoting *Mayo*, 566 U.S. at 78). This second step is described as “a search for an “‘inventive concept’”—*i.e.*, an element or combination of elements that is ‘. . . significantly more than . . . the [ineligible concept] itself.’” *Id.* at 2355 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

Alice Step One

“The first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016). “The abstract idea exception prevents patenting a result where ‘it matters not by what process or machinery the result is accomplished.’” *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113 (1853)). “We therefore look to whether the claims . . . focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO*, 837 F.3d at 1314.

The Examiner finds claim 1 is directed to the abstract idea of “grouping people according to previous work history from their resume[s],” which falls into the category of certain methods of organizing human activity. Ans. 4. Appellant contends the Examiner’s concept of the claims is an over-generalization of the claimed subject matter. Reply Br. 4–5. Specifically, Appellant argues the Examiner’s concept ignores that the

claims recite parsing resumes to identify an “entity” and “skill or experience-related phrases.” *Id.* We are not persuaded by Appellant’s argument.

“[A] claim is not patent eligible merely because it applies an abstract idea in a narrow way.” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281 (Fed. Cir. 2018). Rather, we look “at the ‘focus’ of the claims, their ‘character as a whole’” in *Alice* step one. *Elec. Power Grp., LLC v. Alston S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (quoting *Enfish*, 822 F.3d at 1335–36). The purpose of the claimed method is to create a social network based on some resume-based shared network identifier, whatever it may be. Thus, considering the character of claim 1 as a whole, we agree with the Examiner that claim 1 is directed to grouping people based on their previous work history.

Appellant contends that, even if the Examiner’s concept of the claims is correct, the claims are not directed to an abstract method of organizing human activity. Reply Br. 6–8. We disagree. Both the Federal Circuit and “the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases.” *Enfish*, 822 F.3d at 1334. We agree with the Examiner that the identified concept of grouping people based on their previous work history is an abstract idea because it is sufficiently similar to abstract ideas identified in other cases in the category of organizing human activity. *See* Ans. 4.

For example, claim 1’s grouping of people according to previous work history based on certain resume information is analogous to the spam email filtering concept found to be abstract in *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307 (Fed. Cir. 2016). In that case, the Federal

Circuit summarized the claimed method as “receiving e-mail (and other data file) identifiers, characterizing e-mail based on the identifiers, and communicating the characterization” and found this method to be abstract because it was analogous to the human practice of looking at envelopes and discarding letters from undesirable sources. *See id.* at 1313–14. The Examiner’s concept of claim 1 in this case is comparable to the spam email filtering concept in *Intellectual Ventures I* because grouping people according to previous work history requires matching identifiers in resume information, which is similar to characterizing spam by matching identifiers in emails. *See id.* In both cases, the claims operate to perform characterizations based on data—“in other words, filtering files/e-mail”—which is an abstract idea. *Id.* at 1313.

Other comparable examples of abstract methods of organizing human activity, specifically, characterizations/classifications based on data, include: *In re TLI Communications LLC Patent Litigation v. AV Automotive, L.L.C.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (“classifying an image and storing the image based on its classification”); *Intellectual Ventures I LLC v. Capital One Bank (USA), National Association*, 792 F.3d 1363, 1369 (Fed. Cir. 2015) (“customizing web page content as a function of navigation history and information known about the user”); *Content Extraction and Transmission LLC v. Wells Fargo Bank, National Association*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“data collection, recognition, and storage”).

Appellant’s argument that one cannot perform the method of claim 1 with pen and paper (*see* Reply Br. 8) fails to persuade us that claim 1 is not directed to an abstract method of organizing human activity. But for the preamble recitation in claim 1 of “a server computer system,” the claimed

method could indeed be performed by a human reading through paper resumes and tallying with pen and paper which resume owners are associated with which entities for different time periods. The social networks would then be apparent from looking at the tally.

Appellant contends the claims are directed to an improvement in computer functionality. Reply Br. 8–11. Specifically, Appellant argues the “claimed invention makes it possible . . . not only to complete the task, but also to complete the task in significantly less time, and with greater accuracy and consistency.” Reply Br. 10. We disagree because the Federal Circuit has found this line of argument unavailing. *See OIP Technologies*, 788 F.3d at 1363 (“[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.”). Claim 1 does not recite specific computer components or processes, let alone frame the method in terms of an improvement to such components or processes. Rather, claim 1 merely recites the augmentation of a human practice by computer automation, which shows only the use of a computer as a tool, not an improvement to computer capabilities as in *Enfish*.

Based on the foregoing, we agree with the Examiner (Ans. 4) and find claim 1 is directed to the abstract idea of grouping people based on previous work history.

Alice Step Two

Appellant does not specifically identify arguments in the Reply Brief as being directed to *Alice* step two. Nevertheless, to the extent that Appellant’s argument that “the claimed invention is not only an improvement to computer capabilities, but also novel, nonobvious, and

allowable” (Reply Br. 3–4) falls under this prong, we briefly address it here. Although the second step of the *Alice* framework is described as a search for an “inventive concept,” 134 S. Ct. at 2355, the analysis is not an evaluation of novelty or non-obviousness. A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a *new* abstract idea is still an abstract idea. The search for a § 101 inventive concept is thus distinct from demonstrating § 102 novelty.”).

Accordingly, Appellant has not shown that any additional limitations in claim 1, considered either individually or in combination, amount to significantly more than the abstract idea itself. We are, therefore, not persuaded the Examiner erred in rejecting claim 1, and claims 2–22 grouped therewith, as patent-ineligible.

Obviousness

Appellant contends there would have been no motivation to combine McGovern and Ehrlich for several reasons. App. Br. 14–15. First, Appellant argues “Ehrlich does not use the term ‘resume’ in a way similar to either McGovern or the Applicant’s invention.” App. Br. 15. Second, Appellant argues “Ehrlich does not define the term ‘jobs’ in a way similar to either McGovern or the Applicant’s invention.” *Id.* Third, Appellant argues “Ehrlich does not define the network that he creates in a way similar to the Applicant’s invention.” *See* App. Br. 16. We are not persuaded by Appellant’s arguments.

We note that, despite arguing there to have been no motivation to combine, Appellant does not specifically explain why the Examiner’s proposed motivation for combining Ehrlich with McGovern is insufficient. *See* App. Br. 14–17. Rather, Appellant’s position appears to rest on alleged differences between Ehrlich and Appellant’s invention. *See id.* Appellant’s argument that Ehrlich fails to disclose a “resume” (App. Br. 15), however, is unavailing because, as the Examiner points out (Ans. 9–10), McGovern, not Ehrlich, is relied upon for disclosing the claimed “resume.” Appellant’s argument that Ehrlich fails to disclose “jobs” (App. Br. 15) is also unavailing because the claims do not recite “jobs.”

As to Appellant’s argument that Ehrlich fails to disclose a “social network” (App. Br. 16) Ehrlich describes:

a method and related system for *analyzing the work history of workers to determine a social network in terms of which workers have worked together previously*. The methodology could be configured to use past working relationships on any one of several criteria such as hours worked together, projects successfully completed together as defined by client surveys or other commonly used management measurement tools. . . . Once the worker attributes are enhanced with the results of social network analysis, a bipartite graph is built and weights applied to each of the links. The weights are used to match the workers with the particular jobs. The match is then used to assign a worker to each job.

Ehrlich, ¶ 9 (emphasis added). We see no appreciable difference between Ehrlich’s social network and the claimed “social network.” As recited in claim 1, Appellant’s “social network” is created based on shared network identifiers that overlap in time. Ehrlich’s social network is created based on shared work history of workers, where the work history can include “hours

worked together, projects successfully completed together.” Ehrlich, ¶ 9. Accordingly, we agree with the Examiner that Ehrlich discloses the claimed “social network.” Ans. 11.

In any case, as noted above, Appellant’s arguments are directed to the combination of McGovern and Ehrlich, but Appellant does not specifically explain why the Examiner’s combination lacks proper motivation. *See* App. Br. 14–17. Accordingly, we are not persuaded the Examiner erred in rejecting claims 1–22 as obvious.

DECISION

We affirm the Examiner’s decision to reject claims 1–22.

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