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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHEN M. POLSTON,
AARON MATTHEW VENNIE,
JEFFREY MATTHEW COLVILLE,
MICHELLE PATRICE HILLER, and
JOAN MARIE SKALLMAN

Appeal 2018-004047
Application 13/071,828
Technology Center 3600

Before JOHNNY A. KUMAR, JOHN A. EVANS, and
LINZY T. McCARTNEY, *Administrative Patent Judges*.

McCARTNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–21. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

BACKGROUND

This patent application concerns a system and method for “allowing a real estate agent to directly enroll a buyer in a destination real estate market after referring the buyer to a receiving agent.” Specification, Abstract, filed March 25, 2011 (“Spec.”). Claims 1, 16, and 21 are independent. Claim 1 illustrates the claimed invention:

1. A computer for allowing a referring agent who does not work in a destination location to refer a buyer to a receiving agent that works in the destination location, comprising:

a processor and a non-transitory computer readable medium combined with the processor having a computer program embodied therein, the computer program comprising

a) programming for managing a computerized database system that

i) associates the referring agent with a first location different than the destination location within the computerized database system; and

ii) associates the receiving agent and destination specific real estate listings data with the destination location within the computerized database system;

b) programming for creating a real estate agent interface that provides an interface for the referring agent to refer the buyer to the receiving agent;

c) programming for assigning the receiving agent to the buyer within the computerized database system after the referral; and

d) programming for creating a buyer interface that

i) withholds at least a portion of the destination specific real estate listings data from the buyer until the buyer is assigned to the receiving agent, and

ii) after assigning the buyer to the receiving agent, provides the withheld destination specific real estate listings data to the buyer.

Appeal Brief 16, filed August 30, 2017 (“App. Br.”).

REJECTIONS

| Claims | Basis | Reference |
|----------------|--------------|---------------------|
| 1–21 | § 101 | |
| 1–14 and 16–21 | § 102 | Wright ¹ |

DISCUSSION

We have reviewed the Examiner’s rejections and Appellants’ arguments. Appellants have not persuaded us that the Examiner erroneously rejected claim 1–21 under § 101. For this rejection, as consistent with the discussion below, we adopt the Examiner’s findings, reasoning, and conclusions in the Final Office Action mailed August 9, 2016 (“Final Act.”) and the Answer mailed December 22, 2017 (“Ans.”). As for the rejection of claims 1–14 and 16–21 under § 102, Appellants have persuaded us that the Examiner erred.

We address these rejections in turn below. Appellants argue the claims together for each ground of rejection, so as permitted by 37 C.F.R. § 41.37(c)(1)(iv), we decide the appeal for each ground of rejection based on claim 1.

Section 101 Rejection

Section 101 of the Patent Act provides that “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof” is patent eligible. 35 U.S.C. § 101. But the Supreme Court has long recognized an implicit exception to this section: “Laws of nature, natural phenomena, and abstract ideas are not patentable.”

¹ Wright et al. (US 2003/0083895 A1; May 1, 2003).

Alice Corp. v. CLS Bank Int'l, 573 U.S. 208, 216 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). To determine whether a claim falls within one of these excluded categories, the Court has set out a two-part framework. The framework requires us first to consider whether the claim is “directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “the elements of [the] 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.” *Alice*, 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78, 79 (2012)). That is, we examine the claim for an “inventive concept,” “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*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Patent Office recently revised its guidance about this framework. See 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under the Revised Guidance, to decide whether a claim is directed to an abstract idea, we evaluate whether the claim (1) recites subject matter that falls within one of the abstract idea groupings listed in the Revised Guidance and (2) fails to integrate the recited abstract idea into a practical application. See Revised Guidance, 84 Fed. Reg. at 51, 54. If the claim is directed to an abstract idea, as noted above, we then determine whether the claim has an inventive concept. The Revised Guidance explains that when making this determination, we should consider whether the additional claim elements add “a specific limitation or

combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” Revised Guidance, 84 Fed. Reg. at 56.

With these principles in mind, we turn to the § 101 rejection.

Abstract Idea

The Examiner determined that claim 1 is drawn to subject matter that falls within the “certain methods of organizing human activity” abstract idea grouping identified in the Revised Guidance. *See* Final Act. 13 (determining that claim 1 is drawn to fundamental economic practices); Revised Guidance, 84 Fed. Reg. at 52 (explaining that the abstract idea exception includes certain methods of organizing human activity such as fundamental economic principles or practices, commercial or legal interactions, and managing personal behavior or relationships or interactions between people). For the reasons discussed below, Appellants have not persuaded us that the Examiner erred.

Claim 1 recites a “computer for allowing a referring agent who does not work in a destination location to refer a buyer to a receiving agent that works in the destination location.” App. Br. 16. The computer includes a computer program with “programming” for performing the functions recited in limitations a–d reproduced above. The functions recited in limitations a–c include (1) associating agents and real estate data with specified locations in a computerized database system, (2) creating a real estate interface that allows a referring agent to refer a buyer to a receiving agent, and (3) assigning the receiving agent to the buyer in the computerized database system after the referral. *See* App. Br. 16. The functions recited in limitation

d involve (4) creating a buyer interface that withholds at least some specified real estate data from the buyer until the buyer is assigned to the receiving agent and provides the withheld real estate data to the buyer after assigning the buyer to the receiving agent. *See* App. Br. 16.

As reflected in the preamble of claim 1, the functions recited in limitations a–c allow a referring agent who does not work in a particular location to refer a buyer to a receiving agent that does. And the functions recited in limitation d prevent a buyer from accessing some real estate data until the buyer has been assigned to the receiving agent. These functions are business practices that are not meaningfully different from other business practices that courts have determined are abstract ideas. *See, e.g., buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (creating a contractual relationship); *In re Ferguson*, 558 F.3d 1359, 1364 (Fed. Cir. 2009) (organizing business or legal relationships in the structuring of a sales force or marketing company); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (restricting a consumer’s access to content until an advertisement has been shown); *Prism Techs. LLC v. T-Mobile USA, Inc.*, 696 F. App’x 1014, 1017 (Fed. Cir. 2017) (providing restricted access to resources). Limitations a–d thus recite subject matter that falls within the certain methods of organizing human activity abstract idea grouping identified in the Revised Guidance. *See* Revised Guidance, 84 Fed. Reg. at 52 (explaining that the certain methods of organizing human activity abstract idea grouping includes fundamental economic principles or practices, commercial or legal interactions, and managing personal behavior or relationships or interactions between people). Claim 1 therefore recites an abstract idea.

Because we conclude that claim 1 recites an abstract idea, we next evaluate whether claim 1 integrates the abstract idea into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 51. In doing so, we consider whether there are any additional elements beyond the abstract idea that, individually or in combination, “integrate the [abstract idea] into a practical application, using one or more of the considerations laid out by the Supreme Court and the Federal Circuit.” Revised Guidance, 84 Fed. Reg. at 54–55.

The additional elements recited in claim 1 include a “computer” comprising “a processor and a non-transitory computer readable medium combined with the processor having a computer program embodied therein.” App. Br. 16. The additional elements also include “programming for” performing several functions, including “managing a computerized database system,” “creating a real estate agent interface,” “assigning the receiving agent to the buyer within the computerized database system after the referral,” and “creating a buyer interface.” App. Br. 16.

The written description indicates that these elements encompass generic computer hardware and software. The written description discloses computerized system 10 that includes generic computer hardware such as “digital processor 4 . . . preferably a general purpose CPU, such as those manufactured by Intel or AMD” and “non-volatile, non-transitory, computer readable medium 2.” Spec. ¶ 19. The written description explains that non-volatile, non-transitory, computer readable medium 2 stores “a set of software instructions and / or interfaces” and that “[i]n the preferred embodiment, the computer program is stored on a tangible memory device 2, such as a hard drive or some form of non-volatile memory chip.” Spec. ¶ 19.

The written description also discloses database 110 and generally describes the database in terms of the functions it performs. *See* Spec. ¶¶ 39–40. The written description notes that “none of the entities shown within database 110 in Figure 6 should be considered to show actual implementation details of the database 110, since it is well within the scope of the art to implement this type of data using a variety of entity architectures.” Spec. ¶ 40.

As for the recited “programming,” the written description merely discloses that “web programming 140 exists that define how to create a buyer interface 142, an agent interface 144, a lender interface 146, and a strategic business source interface 148 using the data in the database 110.” Spec. ¶ 42. The written description then explains that this programming “allows the web server 130 to transmit over the World Wide Web 150 a buyer interface 162 that can be seen by a browser operating on a computer 160” and that web server 130 manages other interfaces. Spec. ¶ 42.

Despite these disclosures, Appellants contend that claim 1 is “directed to an improvement of the internal functioning of a computer in the context of electronic databases” and is “rooted in computer technology.” Reply Brief 4, filed February 22, 2018 (“Reply Br.”); App. Br. 8. This is so, according to Appellants, because claim 1 is “directed toward restricting access to data within a database through a first user interface until a change in the computerized database has been established . . . through a separate user interface.” App. Br. 10; *see also* Reply Br. 3–4 (making similar arguments). But as discussed above, restricting access to a resource is an abstract idea. *See Ultramercial*, 772 F.3d at 715; *Prism Techs.*, 696 F. App’x at 1017. Using generic computer hardware and software to do so does not reflect an

improvement in the functioning of a computer or show that claim 1 is rooted in computer technology.

Given the disclosures about the additional elements in the written description, the additional elements recited in claim 1 are generic computer hardware and software used as tools to perform an abstract idea. Claim 1 thus does not integrate the recited abstract idea into a practical application. *See Alice*, 573 U.S. at 223–24 (“[W]holly 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.’” (second and third alterations in original) (quoting *Mayo*, 566 U.S. at 77)).

Inventive Concept

Finally, we consider whether claim 1 has an “inventive concept.” That is, we examine “the elements of [the] 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.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79). Under the Revised Guidance, we evaluate whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” Revised Guidance, 84 Fed. Reg. at 56.

The Examiner determined that the additional elements recited in claim 1 perform well-understood, routine, and conventional activities. *See, e.g.*, Final Act. 4. Appellants contend that this determination lacks adequate

support and assert that the written description “is irrelevant in this analysis.” App. Br. 10.

We disagree. Contrary to Appellants’ arguments, “[t]he written description is particularly useful in determining what is well-known or conventional.” *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1317 (Fed. Cir. 2016). As discussed above, the written description at issue teaches that the additional elements recited in claim 1 are generic computer hardware and software components. *See, e.g.*, Spec. ¶¶ 19, 39–40, 42. The written description also indicates that the additional elements perform well-understood, routine, and conventional activities. For example, the written description provides few details about *how* these elements perform their respective functions; the written description largely just discloses that they do so. *See, e.g.*, Spec. ¶¶ 42 (discussing real estate agent and buyer interfaces), 44–48 (describing the referral process, including accessing listing data). This is sufficient to show that the additional elements perform well-understood, routine, and conventional activities. *Cf. Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986) (explaining that “a patent need not teach, and preferably omits, what is well known in the art”); *see also* Robert W. Bahr, Memorandum on Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*) 3 (Apr. 19, 2018), available at <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF> (explaining that a specification that describes additional elements “in a manner that indicates that the additional elements are sufficiently well-known that the specification does not need to describe the particulars of such additional

elements to satisfy 35 U.S.C. § 112(a)” can show that the elements are well understood, routine, and conventional).

Appellants’ remaining arguments are equally unpersuasive. Appellants argue that claim 1 provides “significantly more” than the recited abstract idea because Appellants believe the claim improves the functioning of a computer “by controlling access to data from a certain user interface until the performance of an act in another user interface is recorded in a computerized database.” *See* App. Br.10. But for the reasons explained above, that is not the case. Appellants also contend that claim 1 is like the claims that the Federal Circuit determined are patent eligible in *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016). *See* App. Br. 11. But the claims in *Amdocs* involved, for example, “components working in an unconventional distributed fashion to solve a particular technological problem.” *Amdocs*, 841 F.3d at 1301. Appellants have provided no persuasive evidence that claim 1 recites components that operate in an unconventional fashion.

Finally, Appellants argue that claim 1 recites a “specific, discrete implementation” of an abstract idea like the claims in *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016). *See* Reply Br. 4–5. But Appellants forfeited this argument by failing to raise it in the Appeal Brief. *See* 37 C.F.R. § 41.41 (explaining that the Board will generally not consider arguments raised in the reply brief that were not raised in the appeal brief). Even if Appellants had not forfeited this argument, we would have found it unpersuasive. In *BASCOM*, the claims involved a “non-conventional and non-generic arrangement of known,

conventional pieces.” *BASCOM*, 827 F.3d at 1350. Appellants have not shown that this is the case for claim 1.

In sum, the record before us indicates that the recited additional elements “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” Revised Guidance, 84 Fed. Reg. at 56. Considered individually or together, these elements do not “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79). We therefore determine that claim 1 does not recite an inventive concept.

Conclusion

For the above reasons, we determine that claim 1 is directed to an abstract idea and does not have an inventive concept. We thus sustain the Examiner’s rejection of claim 1 under § 101.

Section 102 Rejection

Claim 1 recites “programming for creating a buyer interface that,” among other things, “withholds at least a portion of the destination specific real estate listings data from the buyer until the buyer is assigned to the receiving agent.” App. Br. 16.

The Examiner determined that Wright discloses this limitation because Wright teaches providing a buyer access to detailed real estate listing information after the buyer has submitted referral information. *See* Final Act. 4–5; *see also* Ans. 6–8 (same). Appellants argue that Wright does not disclose this limitation because the cited portions of Wright do not teach withholding real estate listing data until the buyer is *assigned an agent*. *See* App. Br. 12.

We agree with Appellants. Claim 1 requires withholding certain real estate listing data “until the buyer is assigned to the receiving agent.” App. Br. 16. The cited parts of Wright teach giving a buyer access to detailed real estate listing data after the buyer has submitted certain information; these parts of Wright do not teach giving the buyer access to this information only after the buyer has been assigned an agent. *See, e.g.*, Wright ¶¶ 43, 72. We thus do not sustain the Examiner’s rejection of claim 1 or its dependent claims under § 102. Because the Examiner’s rejection of independent claims 16 and 21 suffers from similar flaws, we also do not sustain the Examiner’s rejection of claims 16 and its dependent claims or claim 21.

DECISION

| Claims | Basis | Reference | Affirmed | Reversed |
|-------------------|-------|-----------|----------|-------------------|
| 1–21 | § 101 | | 1–21 | |
| 1–14 and 16–21 | § 102 | Wright | | 1–14 and 16–21 |
| Outcome | | | 1–21 | |

Because we affirm at least one ground of rejection for each claim on appeal, we affirm the Examiner’s decision. *See* 37 C.F.R. § 41.50(a)(1). No period for taking action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. §§ 1.136(a)(1)(iv), 41.50(f), 41.52(b).

AFFIRMED