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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL WHITE

Appeal 2018-004867
Application 13/099,434¹
Technology Center 2100

Before JASON V. MORGAN, JEREMY J. CURCURI, and
JOHN R. KENNY, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Introduction

This is an appeal under 35 U.S.C. § 134(a) from the Examiner’s Final Rejection of claims 1, 9–14, and 17–25. Claims 2–8, 15, and 16 are canceled. Final Act. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Invention

Appellant discloses a “system for locating and presenting video content [using a] search is done for events of interest to a user. . . .

¹ Appellant identifies NCR CORPORATION as the real party in interest. Appeal Br. 2.

In one form of the invention, the search is of the conceptual type, and not a key-word search formulated by the user.” Abstract.

Representative Claim

1. A method, comprising:

delivering to a conceptual search engine a first set of search terms entered by a user to identify a single event;

performing a first search with the conceptual search engine based on the first set of search terms to identify subject matter content for the identified event;

selecting a subset of the subject matter content to suppress results of the first search that are unrelated to the identified event;

based on the subset of the subject matter content, modifying at least one search term from the first set of search terms to form a second set of search terms related to the identified event;

automatically forming a search query based on the second set of search terms, without input from the user;

performing a second search with the conceptual search engine based on the search query to locate video footage of the identified event;

recording the video footage; and

delivering the video footage to a mobile device under control of the user.

Rejections

The Examiner rejects claims 1, 9–11, 13, 14, 17–19, and 21–25 under 35 U.S.C. § 103(a) as being unpatentable over Peng et al. (US 2010/0191758 A1; published July 29, 2010), Martch et al. (US 2010/0083319 A1; published Apr. 1, 2010), and Naimark et al. (US 2008/0320159 A1; published Dec. 25, 2008). Final Act. 4–14

The Examiner rejects claims 12 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Peng, Martch, Naimark, and Koningstein (US 2006/0149625 A1; published July 6, 2006). Final Act. 14–16.

The Examiner newly rejects claims 1, 9–14, and 17–25 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Ans. 3–5.

ADOPTION OF EXAMINER’S
FINDINGS, DETERMINATIONS, AND CONCLUSIONS

We agree with and adopt as our own the Examiner’s findings and determinations, as set forth in the Answer and in the Action from which this appeal was taken, and concur with the Examiner’s conclusions in light thereof. We have considered Appellant’s arguments, but do not find them persuasive of error. We provide the following explanation for emphasis.

35 U.S.C. § 103(A)

Examiner’s Findings and Appellant’s Contentions

Peng discloses a search directed to “events occurring in Central Park in New York on weekends in the summer of 2009.” Peng ¶ 24. Martch discloses electronic programming guide data with markers such as “a sports game marker and the keyword ‘Tigers’” that enables a television event to “be included in the search results for Detroit Tigers.” Martch ¶ 56.

In rejecting claim 1 under 35 U.S.C. § 103(a), the Examiner concludes that the combination of Peng’s search for events with Martch’s identification of an event that includes a keyword renders obvious *delivering to a conceptual search engine a first set of search terms entered by a user to identify a single event*. Final Act. 2–3 (citing, e.g., Peng ¶ 24; Martch ¶ 12); *see also* Ans. 7–8. Specifically, the Examiner finds that Peng teaches the claimed delivery to identify a plurality of events, but the Examiner relies on

Martch to teach or suggest modifying Peng’s delivery to identify *a single* event. *See* Final Act. 3; Ans. 8. The Examiner concludes the combination would have been obvious to an artisan of ordinary skill “to provide users with a means for locating television content based on user-entered search terms and filters.” Final Act. 4 (citing Martch ¶ 12).

Appellant contends the Examiner erred because Martch’s “‘markers’ do not teach identifying a single event, but instead indicate that particular television events are related to sports programming.” Appeal Br. 8. Appellant further argues the markers of Martch “are associated with the electronic programming guide, and are not entered by a user.” *Id.*

Analysis

Appellant argues that Martch’s “sports marker and ‘Tigers’ keyword are not entered by a user. Consequently, the sports marker and ‘Tigers’ keyword are not ‘*search terms entered by a user to identify a single event.*’” Appeal Br. 9. The Examiner’s unrebutted findings show, however, that Peng teaches or suggests *search terms entered by a user*. *See* Final Act. 2 (citing Peng ¶¶ 24–29). Thus, Appellant’s contentions attacking Martch fail to show error in the Examiner’s reliance on Peng to teach *delivering to a conceptual search engine a first set of search terms entered by a user to identify a plurality of events*. *See* Final Act. 2–3.

Furthermore, the Examiner properly relies on Martch’s use of markers and keywords (e.g., a sports marker and “Tigers” keyword) to teach information used in a searching or filtering process to identify a particular event—i.e., a *single* event. *Id.* at 3 (citing Martch ¶ 56). Appellant argues “the ‘marker’ does not teach identifying a single event.” Appeal. Br. 8.

Appellant’s arguments are unpersuasive, however, because Martch uses a marker, *combined with* a keyword, to identify a single event. Martch ¶ 56.

Appellant does not show error in the Examiner’s conclusion that it would have been obvious to modify the search terms of Peng to include information, such as Martch’s marker and keyword, to identify a single event rather than a plurality of events. *See* Final Act. 4. Therefore, we agree with the Examiner that the combination of Peng and Martch renders obvious “delivering to a conceptual search engine a first set of search terms entered by a user to identify a single event,” as recited in claim 1.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 103(a) rejections of claim 1, and claims 9–14, and 17–25, which Appellant argues are patentable for similar reasons. Appeal Br. 10.

35 U.S.C. § 101

Examiner’s Determinations and Appellant’s Contentions

In making a new rejection under 35 U.S.C. § 101, the Examiner determines that claim 1 is “directed to the abstract idea of searching for content, refining the search, and retrieving the user-specified content, which is similar to concepts courts have previously found to be abstract, such as ‘*remotely accessing and retrieving user-specified information.*’” Ans. 3 (citing *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315 (Fed. Cir. 2017)). The Examiner determines the additional limitations, considered as an ordered combination, do not “improve[] the functioning of a computer or improve[] any other technology,” but “merely provide [a] conventional computer implementation.” Ans. 5. Thus, the Examiner concludes the additional recitations do not make claim 1 significantly more than the underlying abstract idea. *Id.* at 4.

Appellant contends the Examiner erred because claim 1 improves existing searching technologies by enabling a user to enter “a first set of search terms, and without any further input from the user, [returning] video footage to a mobile device under control of the user.” Appeal Br. 4. Appellant contends the claimed method “automatically replace[s] the cycle of figuring out new search terms . . . and manually reviewing . . . search results.” *Id.* at 3. Appellant further contends that with “the method recited in claim 1 [a user] can advantageously implement ‘*recording the video footage*’ and ‘*delivering the video footage to a mobile device under control of the user*’.” *Id.* Appellant further contends that because “claim 1 improves the technology for delivering content in a computer environment, the method of claim 1 is significantly more than a mere abstract idea.” *Id.* at 4.

Analysis

To be statutorily patentable, the subject matter of an invention must be a “new and useful process, machine, manufacture, or composition of matter, or [a] new and useful improvement thereof.” 35 U.S.C. § 101. There are implicit exceptions to the categories of patentable subject matter identified in § 101, including: (1) laws of nature; (2) natural phenomena; and (3) abstract ideas. *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). The Supreme Court has set forth a framework for distinguishing patents with claims directed to these implicit exceptions “from those that claim patent-eligible applications of those concepts.” *Id.* (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)). The evaluation follows a two-part analysis: (1) determine whether the claim is directed to a patent-ineligible concept, e.g., an abstract idea; and (2) if so, then determine whether any element, or combination of elements, in the claim is sufficient

to ensure that the claim amounts to significantly more than the patent-ineligible concept itself. *See Alice*, 134 S. Ct. at 2355.

“[A]t present there is no such single, succinct, usable definition or test” for what an “abstract idea” encompasses. *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016). Therefore, the conclusion that a claim is abstract often turns on the examination of “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*, 841 F.3d at 1294 (citing *Elec. Power Grp.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)).

“[A]ll inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. We, therefore, look to whether: (1) the claims focus on a specific means or method that improves the relevant technology or (2) the claims are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016).

Step 1

We agree with the Examiner that the claim 1 method—which entails performing both a first search based on search terms to identify an event and a second search based on search terms related to the identified event—is similar to claimed activities such as “accessing records through . . . an index-searchable database” and “[r]emotely accessing and retrieving user-specified information” that are abstract. *See Intellectual Ventures I*, 850 F.3d at 1327, 1330. Performing a search, and then performing a related search, includes “longstanding conduct that existed well before the advent of computers and

the Internet.” *Id.* at 1327. The Specification even details an analogous, non-technological practice of first identifying “subject matter of interest to the public” such as “breaking news or headlines,” and then “polling observers and commentators of the news media [to] identify[] new topics.” Spec. 11, ll. 1–5.

Appellant contends the claimed method does not require manually figuring “out what search terms to omit, add, or change” to perform the claimed second search. Reply Br. 3. However, “mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology.” *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017). Similarly, Appellant’s argument that the claimed invention can “implement ‘*recording the video footage*’ and ‘*delivering the video footage to a mobile device under control of the user*,’” rather than merely returning “links to video content” (Reply Br. 3) merely suggests that the claimed invention automates the process of recording and delivering video footage identified by a search.

Furthermore, claim 1 recites vague steps such as “based on the subject of the subject matter content, modifying at least one search term from the first set of search terms to form a second set of search terms related to the identified event.” Such steps are insufficient to define a “specific process for automatically [refining the first search] using particular information and techniques . . . in a process specifically designed to achieve an improved technological result in conventional industry practice.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1316 (Fed. Cir. 2016).

For these reasons, we agree with the Examiner that claim 1 is directed to an abstract idea. *See* Ans. 3.

Step 2

Appellant contends “claim 1 improves the technology for delivering content in a computer environment, the method of claim 1 is significantly more than a mere abstract idea.” Reply Br. 4. Appellant’s argument is unpersuasive, however, because “the prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of [the idea] to a particular technological environment.” *McRO*, 837 F.3d at 1312 (alteration in original) (quoting *Alice*, 134 S. Ct. at 2358).

Furthermore, the claimed method is directed to an improvement in the process of searching for and retrieving content, rather than to an improved computer. *See Enfish*, 822 F.3d at 1335–36. The Specification’s broad disclosures provide ample evidence that the claimed method merely invokes generic processes and machinery rather than improving any relevant technology. *See, e.g.*, Spec. Fig. 1, p. 3, ll. 17–22 (describing “computer 3, or other management device contain[ing] software 6 and extra hardware 29, if required”), p. 10, l. 24–p. 13, l. 4 (describing a first approach in which “selected web sites, or other forums where the public undertakes discussions, are examined”), p. 13, ll. 5–12 (describing an approach similar to the first approach, but “wherein content is of a particular type”), p. 13, ll. 13–18 (describing a third approach using a search “of a third party’s collection of news items”), p. 13, ll. 19–22 (describing a fourth approach where a Really Simple Syndication “feed can be subscribed to”), p. 19, l. 20–p. 20, l. 15 (describing and contrasting brute force searches and searches of indices), p. 20, ll. 17–24 (describing mobile devices that include “[m]odern cell phones, Personal Digital Assistants (PDAs), notebook computers and the like”).

Appeal 2018-004867
Application 13/099,434

For these reasons, we agree with the Examiner that claim 1 does not include additional recitations that make the claim significantly more than the underlying abstract idea. Ans. 4. Accordingly, we sustain the Examiner's 35 U.S.C. § 101 rejection of claim 1, and claims 9–14, and 17–25, which Appellant argues are patentable for similar reasons. *See* Reply Br. 4.

DECISION

We affirm the Examiner's decision rejecting claims 1, 9–14, and 17–25.

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