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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte VAIBHAV GOEL, SUMAN SUNDARESH and
SATPREET HARCHARAN SINGH

Appeal 2018-005615
Application 14/300,297
Technology Center 3600

Before CARL W. WHITEHEAD JR., ERIC B. CHEN and
GREGG I. ANDERSON, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ are appealing the final rejection of claims 1–5, 7–12, 14–19, and 21² under 35 U.S.C. § 134(a). Appeal Brief 1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The real party in interest is Microsoft Technology Licensing, LLC. Appeal Brief 2.

² Claims 6, 13 and 20 are cancelled.

Introduction

The invention is directed to a system that:

[A]nalyzes the data to identify attributes of employees at a first business organization, creates an employee profile for the first business organization using the identified attributes of the employees, compares the employee profile for the first business organization to a profile of a member, and recommends to the member a job posted by the first business organization when the employee profile for the first business organization is similar to the profile of the member.

Abstract.

Illustrative Claim

1. A memory device, the memory device communicatively coupled to a processor and comprising instructions which, when performed on the processor, cause the processor to:
 - maintain data relating to members and business organizations on an online social networking server;
 - extract data relating to a first business organization from information derived from searches performed and emails sent by a recruiter who is associated with the first business organization when the recruiter is searching on the social networking server and the recruiter is sending messages using the social networking server;
 - analyze the data relating to the first business organization to identify attributes of employees at the first business organization;
 - create an employee profile for the first business organization by using the identified attributes of the employees;
 - compare the employee profile for the first business organization to a profile of a member; and
 - recommend to the member a job posted by the first business organization when the employee profile for the first business organization is similar to the profile of the member.

Rejections on Appeal

Claims 1–5, 7–12, 14–19 and 21 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter. Final Action 2–7.

Claims 1–5, 7–12, 14–19 and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Patwa (US Patent Application Publication 2013/0046704 A1; published February 21, 2013) and Schneiderman (US Patent Application Publication 2010/0153289 A1; published June 17, 2010). Final Action 7–15.

ANALYSIS

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed January 19, 2018), the Reply Brief (filed May 11, 2018), the Final Action (mailed November 16, 2017) and the Answer (mailed March 28, 2018), for the respective details.

35 U.S.C. § 101 rejection

The Examiner determines the claims are patent ineligible under 35 U.S.C. § 101 because the “**abstract idea** is employee recruitment and is specifically defined by the claimed steps” and therefore “the claims fall under at least the categories of **an idea of itself.**” Final Action 5; *see Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (describing the two-step framework “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.”).

After the mailing of the Answer and the filing of the Briefs in this case, the USPTO published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50

(Jan. 7, 2019) (hereinafter “Memorandum”). Under the Memorandum, the Office first looks 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* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. 2018)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office 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.

We are not persuaded the Examiner’s rejection is in error. Unless otherwise indicated, we adopt the Examiner’s findings and conclusions as our own, and we add the following primarily for emphasis and clarification with respect to the Memorandum.

Alice/Mayo—Step 1 (Abstract Idea)

Step 2A—Prongs 1 and 2 identified in the Revised Guidance

Step 2A, Prong One

Appellants argue:

In rejecting the claims 1-5, 7-12, 14, 19, and 21 under 35 U.S.C. § 101, the Examiner has not met this burden under the “substantial evidence” standard. In particular, the Examiner asserts that the claims are directed to “employee recruitment and

is specifically defined by the claimed steps . . . [.] As such, the claims fall under at least the categories of an idea of itself”

However, the Examiner has cited no support or evidence and has provided no argument or reasoning as to why this is so. Appellants respectfully submit that the Examiner’s statement is a bare, conclusory statement and further respectfully submit that under the APA [Administrative Procedure Act], such a conclusory statement cannot sustain a rejection under 35 U.S.C. § 101.

Appeal Brief 12.

Appellants’ argument is not persuasive. Instead, we agree with the Examiner’s determination that the claims are directed to an abstract idea.

Final Action 3–6.

The Specification discloses in paragraph 15, “Example methods and systems are directed to recommending a job posted by a business organization to a user of a social networking service when an employee profile for the business organization is similar to a profile of the user. Claim 1 recites the, “memory device communicatively coupled to a processor and comprising instructions” wherein the processor “maintain[s] data relating to members and business organizations on an online social networking server” in which “extract data relating to a first business organization from information derived from searches [is] performed.” Claim 1 further recites, “analyze the data relating to the first business organization to identify attributes of employees at the first business organization” and “create an employee profile for the first business organization by using the identified attributes of the employees;” “compare the employee profile for the first business organization to a profile of a member” and “recommend to the member a job posted by the first business

organization when the employee profile for the first business organization is similar to the profile of the member.”

We find the claimed steps comprise of mental processes; concepts that are performed in the human mind such observing the data on social networks, evaluating if the observed data relates to a business organization’s profile and providing an opinion or recommendation to the business organization based upon the evaluation of the observed data. Memorandum, Section I (Groupings of Abstract Ideas); *see* Specification paragraphs 15, 16 and 20 (“Consequently, a system has been developed that recommends to a user of a social networking service a job posted by a business organization when an employee profile for the business organization is similar to a profile of the user, creates a job profile for a particular job title or job function at a business organization using member profiles and job profiles, and/or calculates an average time period that a typical employee has had a particular job title or job function for a business organization.”). Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *See* Memorandum, footnotes 15 and 16.

Step 2A, Prong Two (Integration into a Practical Application)

Under Prong Two of the Revised Guidance, we must determine whether there are “additional elements that integrate the [judicial] exception into a practical application.” Memorandum 54; *see* MPEP § 2106.05(a)--(c), (e)--(h). Appellants contend:

[T]he claims are rooted in computer technology, and simply cannot be performed divorced from such computer technology. Specifically, without computer technology, the Internet, email, and job websites, a business organization that wanted to hire the

people most likely to fit into its culture and likely succeed had to rely on resumes sent to it from prospective candidates. Without the Internet and online social networking sites, such business organizations did not have access to others' professional profiles and job profiles.

Appeal Brief 19.

Appellants argue the claims “are the flip side of the claims in *DDR Holdings*, in that they take advantage of an Internet technology, and do not just simply put an old and well-known process on the Internet.” Appeal Brief 20. Appellants contend:

Specifically, unlike the pre-Internet days of a business organization only being able to scour many resumes and applications *that were sent to it* to locate job candidates that had the potential of fitting into the culture of the business organization and succeeding at the business organization, the claimed subject matter takes advantage of the member profiles, job profiles, recruiter emails, and recruiter searches on an online social networking site, and greatly expands the ability of the business organization to locate employees that are a good fit to the culture of the business organization.

Appeal Brief 20.

We find claims 1, 8, and 15 do not recite supporting technology for improving a computer system; the claims merely recite a device, method and system that evaluate the qualifications of a social network member to recommend a job from a business organization to the member. *See* Specification paragraphs 15, 16 and 20; *see also Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016) (“[W]e find it relevant to ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea . . . the focus of the claims is on the specific asserted improvement in computer capabilities (i.e.,

the self-referential table for a computer database) or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.”). The claims do not recite an additional element or elements that reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field. *See Alice*, 573 U.S. at 222 (“In holding that the process was patent ineligible, we rejected the argument that ‘implement[ing] a principle in some specific fashion’ will ‘automatically fal[l] within the patentable subject matter of § 101.’” (alterations in original) (quoting *Parker v. Flook*, 437 U.S. 584, 593 (1978))).

Further, we find Appellants’ claims are distinguished from those claims that our reviewing court has found to be patent eligible by virtue of reciting technological improvements to a computer system. *See, e.g., DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1249, 1257 (Fed. Cir. 2014) (holding that claims reciting a computer processor for serving “composite web page” were patent eligible because “the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks”); *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1259 (Fed. Cir. 2017) (holding that claims directed to “an improved computer memory system” having many benefits were patent eligible).

Accordingly, we determine the claims do not integrate the judicial exception into a practical application. *See Memorandum, Section III(A)(2) (Prong Two: If the Claim Recites a Judicial Exception, Evaluate Whether the Judicial Exception Is Integrated Into a Practical Application).*

Alice/Mayo—Step 2 (Inventive Concept)
Step 2B identified in the Revised Guidance

Step 2B

Next, we determine whether the claim includes additional elements that provide significantly more than the recited judicial exception, thereby providing an inventive concept. *Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73). Appellants contend:

Using the contention by the Examiner that the abstract idea is employee recruitment, Appellants respectfully submit that the additional limitations of “creat[ing] an employee profile for the first business organization using the identified attributes of the employees (from the social network server and recruiter searches and emails); compar[ing] the employee profile for the first business organization to a profile of a member; and recommend[ing] to the member a job posted by the first business organization when the employee profile for the first business organization is similar to the profile of the member,” go beyond the mere abstract idea of employee recruitment.

Appeal Brief 18.

We are not persuaded, as we find the claims do not include a specific limitation or a combination of elements that amounts to significantly more than the judicial exception itself. *See* Memorandum, Section III(B) (Step 2B: If the Claim Is Directed to a Judicial Exception, Evaluate Whether the Claim Provides an Inventive Concept); *see also Aatrix Software, Inc. v. Green Shades Software, Inc.*, 890 F.3d 1354, 1359 (Fed. Cir. 2018) (Moore, J., concurring) (“[T]he ‘inventive concept’ cannot be the abstract idea itself”); *see* Final Action 6–7.

We conclude claims 1–5, 7–12, 14–19, and 21 are directed to a mental process wherein the recited limitations are concepts performed in the human mind as identified in the Memorandum and thus an abstract idea, as well as,

the claims do not recite limitations that amount to significantly more than the abstract idea itself. Accordingly, we sustain the Examiner's § 101 rejection of claims 1–5, 7–12, 14–19, and 21.

35 U.S.C. § 103 rejection

Appellants argue:

Independent claims 1, 8, and 15 recite in part:

extract data relating to a first business organization from information derived from searches performed and emails sent by a recruiter who is associated with the first business organization when the recruiter is searching on the social networking server and the recruiter is sending messages using the social networking server;

The Final Office Action contends that these features are disclosed in paragraphs [0025] and [0026] of Patwa. Appellants respectfully disagree.

Appeal Brief 24.

Appellants contend:

Paragraph [0025] of Patwa only relates to matching candidate profiles with recruiting requirements, wherein the recruiting requirements were entered by recruiters using a GUI. Appellants respectfully submit that a recruiter who enters candidate requirements via a GUI is not a disclosure of mining data from searches performed or emails sent by a recruiter in an online social networking system. Paragraph [0026] of Patwa only relates to users having the ability to exchange messages with each other on a recruitment management platform. The simple ability to exchange messages on a system is not a disclosure of the claimed feature of mining data from searches performed or emails sent by a recruiter on an online social networking system.

Appeal Brief 24.

The Examiner finds that the:

[C]laims are very broad, and upon reviewing the specification, there is no specific function of the extraction engine for this data, or any specialized way the data is being extracted. Based on the broadest reasonable interpretation, the Examiner is interpreting this as extracting recruitment data (data associated with recruiters, businesses including email interactions, searches performed by the recruiters) in the social network.

Answer 10.

The Examiner further finds that Patwa teaches extracting or *mining* data from searches performed and emails sent by a recruiter on a social networking system. Answer 10–11 (citing Patwa, paragraph 21); *see* Final Action 8 (Patwa’s paragraph 21 was recited for disclosing social networking services). Appellants argue:

[T]he Examiner contends the claims are very broad, and contends that there is no specific way the data are extracted, and the Examiner states that she is interpreting this element as extracting recruitment data. In reply, Appellants respectfully submit that there is nothing overly broad about extracting data from recruiter searches and emails.

Reply Brief 3.

Appellants do not address the merits of Patwa’s paragraph 21 in the Reply Brief.

Patwa discloses:

The computer implemented method and system disclosed herein also provide incentives for individual users to add, enhance, or correct the profiles of other users and provide recommendations to those other users. . . . Furthermore, the computer implemented method and system disclosed herein enable users to provide recommendations to other users even in the absence of a particular job opening that may fit the user to

whom they are giving a referral or a recommendation. . . . Therefore, the computer implemented method and system disclosed herein enable an expedited development of a large data store containing information of candidates with rich, community-sourced profiles and recommendations. *This large, rich data store can be referenced by employers for an effective recruitment process.*

Patwa, paragraph 15 (*emphasis added*).

The recruitment interaction management platform acquires *recruitment advisory information* from the users via the GUI based on the roles of each of the users, and/or from one or more first external sources via the network. As used herein, the term “first external sources” refers to social network sources comprising, for example, professional networking sources such as LinkedIn® of LinkedIn Corporation, social media sources such as Facebook® of Facebook, Inc., etc. . . . The user expectation information is herein referred to as “make me move” criteria, which allows candidates to search for a better job or employment when they are already employed. The “make me move” criteria allow passive candidates to specify their interests and *receive inquiries from recruiters* only when the recruiters’ posted jobs meets the “make me move” criteria.

Patwa, paragraph 21 (*emphasis added*).

The recruitment interaction management platform generates the candidate list that matches the recruiting requirement by processing, for example, recommendations, screening results, and user expectation information extracted from the *recruitment advisory information*, and sorting the created candidate profiles based on predefined categories.

Patwa, paragraph 25 (*emphasis added*).

In an embodiment, the recruitment interaction management platform manages the recruitment interactions among the users independent of a recruiting requirement. In an embodiment, the recruitment interaction management platform provides a private messaging interface for exchanging messages between one of the

users and another user in one or more of multiple communication modes, for example, a text communication mode, an image communication mode, a video communication mode, a voice communication mode, a multimedia communication mode, an instant messaging communication mode, etc.

Patwa, paragraph 26.

Accordingly, Patwa discloses a database or store that can be used by employers for recruitment purposes thus extracting data derived from searches wherein the data within the database or store can originate from social networking servers. Patwa discloses various communication methods that can be employed by the users to communication within the system. *See* Patwa, paragraph 26. Patwa further discloses that email can be one of the various communication methods utilized by the users within the system. *See* Patwa, paragraphs 38, 40, 60 and 72. However, Patwa does not specify that the recruiters communicates with the company or business organization via emails or messaging using the social networking server but it is evident that the recruiters communicates with both the business organizations and users. Accordingly, we do not find Patwa's failure to disclose *how* the recruiter communicates with the business organization or the user, sufficient to overturn or reverse the Examiner's obviousness rejection of independent claims 1, 8 and 15. "As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Accordingly, we sustain the Examiner's obviousness rejection of independent claims 1, 8 and 15, as well as, dependent claims 2–5, 7, 9–12, 14, 16–19 and 21 not argued separately. *See* Appeal Brief 24–26.

DECISION

The Examiner's patent-ineligible subject matter rejection of claims 1–5, 7–12, 14–19 and 21 is affirmed.

The Examiner's obviousness rejection of claims 1–5, 7–12, 14–19 and 21 is affirmed.

No time period for taking any subsequent 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)(v).

AFFIRMED