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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DAVID R. DENIS

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Appeal 2018-006235  
Application 15/369,487  
Technology Center 2100

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Before ALLEN R. MacDONALD, MICHAEL J. STRAUSS, and  
MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 17–19, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

*Technology*

The application relates to “collecting and correlating information regarding physical addresses in a database and using that database to target communications to occupants of those addresses.” Spec. 1.

*Illustrative Claim*

Claim 17 is illustrative and reproduced below with certain limitations at issue emphasized:

17. A method for using a database keyed to physical addresses comprising:

a) Creating an address database capable of storing a plurality of address records, each address record having a plurality of address record fields, one of the plurality of address record fields being a unique physical location field able to store a unique physical address location;

b) *Obtaining a plurality of address record data items, each address record data item comprising at least two facts, the at least two facts including a unique physical address identifier corresponding to a unique physical address and a second fact describing a non-physical location property of the unique physical address, wherein none of the at least two facts comprise a name or a unique identifier corresponding to a particular individual person;*

c) Storing the plurality of address record data items in the address database such that, the at least two facts are stored in the plurality of address record fields, with the unique physical address identifier of the address record data item being stored in the unique physical location field and the second fact being stored in any of the other of the plurality of address record fields;

d) Selecting a first subset of the plurality of address records by evaluating at least one of the address record fields which is not the unique physical location field to see if the at least one address record field which is not the unique physical location field matches a specified condition;

e) Creating a targeted communication having a locational relevance such that the targeted communication will be of a higher level of locational relevance to a plurality of recipients at a relative locational relevance level determined by whether the recipient occupies one of the unique physical addresses corresponding to one of the unique physical address identifiers stored within one of the first subset of the plurality of address records; and,

f) Sending the targeted communication to all of the unique physical addresses corresponding to the unique physical address identifiers stored in the first subset within the plurality of address records.

*Rejections*

Claims 17–19 stand rejected under 35 U.S.C. § 102(a)(1) as anticipated by Abhyanker (US 2014/0237062 A1; Aug. 21, 2014). Final Act. 7–19.

Claims 17–19 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Act. 5–6.<sup>1</sup>

ISSUES

1. Did the Examiner err in finding Abhyanker discloses “none of the at least two facts comprise a name or a unique identifier corresponding to a particular individual person,” as recited in claim 17?

2. Did the Examiner err in concluding that claim 17 was unpatentable under § 101?

ANALYSIS

*§ 102*

Appellant argues that “Abhyanker teaches, as does all other known prior art, that data used for targeting communications should be correlated with the person, not the address *independent* of the person.” App. Br. 20.

We agree with the Examiner, however, that “the claims do not recite this limitation.” Ans. 7. Instead, claim 17 recites “each address record data item comprising at least two facts, . . . wherein none of the at least two facts comprise a name or a unique identifier corresponding to a particular individual person.” We agree with the Examiner that this limitation only requires “the at least two facts” to not correspond to a particular person but does not preclude the address record data item from containing *other* record

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<sup>1</sup> The rejection under 35 U.S.C. § 112(a) was withdrawn. Ans. 2.

fields that “may include information about a particular person.” Ans. 8; *see, e.g., Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501 (Fed. Cir. 1997) (“the open-ended term ‘comprising’ . . . means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim”).

The same logic applies to “a plurality of address record fields” in claim 19. As presently written, this does not preclude *other* record fields that are correlated to a particular individual.

Dependent claim 18 narrows only “the second fact,” not the potential for *other* facts in *other* fields.

Accordingly, we sustain the Examiner’s rejection of claims 17–19.

#### § 101

To determine patentable subject matter under § 101, the Supreme Court has set forth a two part test. “First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts” of “laws of nature, natural phenomena, and abstract ideas.” *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). If so, then in the second step, we “consider the elements of each 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.” *Id.* (quotations omitted). The Supreme Court has “described step two of this analysis as a search for an ‘inventive concept’—*i.e.*, 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.” *Id.* (quotation omitted).

Here, we agree with the Examiner that “[c]laims 17-19 are directed to an abstract idea of sending targeted communications to a subset of users.” Final Act. 5. For example, in claim 17, the claimed steps are “directed to receiving and distributing data based on certain characteristics of the data, which the courts have identified as an abstract idea such as in *Intellectual Ventures I LLC v. Capital One Bank (USA)* [792 F.3d 1363 (Fed. Cir. 2015)].” Final Act. 5. In *Intellectual Ventures*, the Federal Circuit held that “tailoring content based on the viewer’s location or address” and similar “information tailoring” was “a fundamental practice long prevalent in our system” and “is an abstract idea.” 792 F.3d at 1369 (quotation omitted).

The Examiner further determines that “[c]laim 17 is also directed to filtering of data which has been identified by the courts to be an abstract idea [in] *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 . . . (Fed. Cir. 2016).” Final Act. 5. In *BASCOM*, the Federal Circuit held that “filtering content is an abstract idea because it is a longstanding, well-known method of organizing human behavior, similar to concepts previously found to be abstract.” 827 F.3d at 1348.

For all of the claims, Appellant argues:

Here, the claimed invention allows targeted communication with consumers located at physical addresses under circumstances wherein, absent the teaching of the invention, a person of ordinary skill in the art would determine such communication *could not be made*, because the invention teaches a method for using databases which do not include information about the consumers residing at those physical addresses.

App. Br. 18.

First, Appellant’s argument is directed at the novelty of the claims. Yet the Supreme Court has held that “[t]he ‘novelty’ of any element or steps

in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981); *see also SAP Am., Inc. v. InvestPic, LLC*, 890 F.3d 1016, 1018 (Fed. Cir. 2018) (“Nor is it enough for subject-matter eligibility that claimed techniques be novel and nonobvious in light of prior art, passing muster under 35 U.S.C. §§ 102 and 103.”). Thus, Appellant has not sufficiently explained how this argument applies to the rejection under § 101 rather than the issues of novelty and obviousness under §§ 102 or 103.

Second, as discussed for the anticipation rejection, Appellant’s argument (i.e., that the “databases . . . do not include information about the consumers residing at those physical addresses”) is not commensurate with the scope of the claims as presently written.

Appellant further argues:

The concept of overcoming the lack of information, or the misleading or incorrect information, stored in the consumer database by using a database which is unrelated to information about that consumer except insofar as it relates to the seldom or never-changing qualities of a *physical address* is the sort of ‘additional feature’ which the *Alice* test addresses . . . .

App. Br. 19. Although this argument is tied to the § 101 test, we note again that “a database which is unrelated to information about that consumer” is not required by the claims as presently written.

Accordingly, we sustain the rejection of independent claims 17 and 19, and dependent claim 18, which Appellant argues is patentable for similar reasons. *See* App. Br. 2–5; 37 C.F.R. § 41.37(c)(1)(iv).

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DECISION

For the reasons above, we affirm the decision rejecting claims 17–19.

No time for taking 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