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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/339,164	12/28/2011	Gregory M. Nations	201104116	8265
67260	7590	09/12/2019	EXAMINER	
TARGET BRANDS, INC. 1000 NICOLLET MALL, TPS-3165 MINNEAPOLIS, MN 55403			WHITAKER, ANDREW B	
			ART UNIT	PAPER NUMBER
			3629	
			NOTIFICATION DATE	DELIVERY MODE
			09/12/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGORY M. NATIONS, CHAD R. GOURLEY,
SARAH JELLISON, SARAH PETERSON, and STEPHEN HOPF

Appeal 2018-006691¹
Application 13/339,164²
Technology Center 3600

Before HUBERT C. LORIN, BEVERLY M. BUNTING, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s rejection of claims 1, 2, 4, 6–12, 17, 18, and 20, which are all the claims pending in the Application, under 35 U.S.C. § 101 as directed to a judicial exception without significantly more. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our Decision references Appellants’ Appeal Brief (“App. Br.,” filed Feb. 16, 2018) and Reply Brief (“Reply Br.,” filed June 14, 2018), the Examiner’s Answer (“Ans.,” mailed May 10, 2018), and the Non-Final Office Action (“Non-Final Act.,” mailed Nov. 24, 2017).

² Appellants identify “Target Brands, Inc.” as the real party in interest. App. Br. 3.

THE INVENTION

“[T]he system/method relates to highlighting user reviews of products, services and the like on a website by identifying reviews submitted by a requesting user and displaying the user's review on a website in a highlighted manner.” App. Br. 9. Independent claim 17, reproduced below with revised formatting and added bracketed matter, is illustrative of the subject matter on appeal.

17. A method using a client computer in communication with a web server via a network, the method comprising:

[(a)] a web server communicating with a client device and providing a retail website listing items for sale or review;

[(b)] the web server enabling a user to log in on the website with a reviewer identification and request a list of reviews to be displayed on the website;

[(c)] determining with the web server communicating with the client computer whether a user who has requested that the list of reviews be displayed is the same user who had previously submitted a review in the list of reviews by:

[(i)] associating a unique identifier for the user with a session identifier, the session identifier being a server-side identifier that groups different requests to the web server as coming from the client computer, the session identifier allowing the web server to save state information including the unique identifier for use with subsequent requests during a same session,

[(ii)] communicating identification information of reviewers on the list of reviews to a persona server, the persona server storing persona records for all users including persona identification, and

[(iii)] the web server comparing the reviewer identification with persona identifications of the reviewed on the list of reviews; and

[(d)] in response to the user requesting that the list of reviews be displayed on the website, and based on the outcome of the determining step,

serving with the web server over the communication network instructions to the client computer to concurrently display on the website the review received from the user and at least one additional review received from another person so as to visually highlight and distinguish the review received from the user relative to the at least one additional review, and the web server processing code in a web application to define the concurrent display on the website with a link for the user to add a review removed from the website.

ANALYSIS

The Examiner rejected claims 1, 2, 4, 6–12, 17, 18, and 20 under 35 U.S.C. § 101 as being directed to a judicial exception without significantly more. Non-Final Act. 5. Appellants argue independent claims 1, 9, and 17 together as a group. App. Br. 9–12. We select independent claim 17 as representative for the group. Thus, claims 1 and 9 stand or fall with claim 17. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Principals of Law

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g., Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573

U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 130 S.Ct. 3218 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

USPTO § 101 Guidance

The USPTO recently published revised guidance on the application of § 101. USPTO’s *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under Step 2A, Prong One of the Guidance, we determine if the claim recites a judicial exception, including particular groupings of abstract ideas (*i.e.*, mathematical concepts, certain methods of organizing human activity, or mental processes). *Id.* at 52–53. If so, we then analyze the claim to determine whether the recited judicial exception is integrated into a practical application of that exception under Step 2A, Prong Two of the Guidance. *Id.* at 53–55; MPEP

§§ 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018). Only if the claim fails to integrate the exception and thus is “directed to” the judicial exception, do we then look to whether the claim adds a specific limitation beyond the judicial exception that is not well-understood, routine, and conventional activity in the field or whether the claim simply appends well-understood, routine, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Guidance, 84 Fed. Reg. at 56.

Alice Step 1

Does claim 17 recite a judicial exception?

Under the first step of the *Alice* inquiry, the Examiner determined the claims “are directed to the abstract idea of organizing and displaying reviews from users.” Non-Final Act. 5. According to the Examiner:

Organizing and displaying information is a method of organizing human activity and/or fundamental economic practice (*American Needle, Inc. v. Zazzle Inc.*, No. 2016-1550, 2016 WL 6647774 (mem) (Fed. Cir. Nov. 10, 2016) (affirming district court holding that “providing a visual aide to purchasing over the internet” is an abstract idea) and gathering and combining data by reciting steps of organizing information similar to generating a second menu from a first menu and transmitting the second menu to a wireless handled computing device or webpage (*Ameranth*) except instead of generating and transmitting a menu, a display on a website is generated displaying review(s) collected in the previous steps.

Id. at 6.

Appellants argue:

The claim addresses a business challenge that is particular to the Internet (displaying user reviews on a website and preventing users from submitting multiple user reviews on the

website). The claimed invention differs from other claims found by the courts to recite abstract ideas in that it does not “merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.”

Appellants submit that no idea similar to those previously found by the courts to be abstract is identifiable in the claim.

App. Br. 9. We are not persuaded by Appellants’ arguments.

Claim 17 recites (a) “providing a . . . listing [of] items for sale or review;” (b) “request[ing] a list of reviews to be displayed;” (c) “determining . . . whether a user who has requested that the list of reviews be displayed is the same user who had previously submitted a review in the list of reviews by . . . comparing the reviewer identification with identifications of the reviewed on the list of reviews; and” (d) “in response to the user requesting that the list of reviews be displayed . . . and based on the outcome of the determining step . . . concurrently display[ing] . . . the review received from the user and at least one additional review received from another person so as to visually highlight and distinguish the review received from the user relative to the at least one additional review.” *See Claim 17 supra.*

Under the broadest reasonable interpretation, the aforementioned steps describe a process of customizing the display of reviews for an item offered for sale based on information known about the user (i.e., whether the user has already submitted a review for that item). Essentially, claim 17 provides a method for highlighting a user’s review for display if the user already submitted a review of the item. “Highlighting a review can include making the review appear differently than other displayed reviews by, for example,

using a different background color for the review, using a different font size for the review, or using bold text for the review.” App. Br. 10. Tailoring the display of reviews (content) for an item advertised for sale is a type of advertising, marketing, or sales activity or behavior that falls within the Guidance’s (b) Certain methods of organizing human activity grouping. Guidance, 84 Fed. Reg. at 52.

Contrary to Appellants’ contention, courts have found similar concepts abstract. For example, in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363 (Fed. Cir. 2015), the patentee claimed a system for providing web pages tailored to an individual user, comprising an interactive interface having a display that depicts customized content based on (1) information known about the user and (2) navigation data. 792 F.3d. at 1369. The Federal Circuit determined that both types of customization were abstract ideas. The court described the first type of customization (tailoring content based on user information) as similar to how “newspaper inserts had often been tailored based on information known about the customer--for example, a newspaper might advertise based on the customer's location,” and the second type of customization (tailoring information based on the time of day the website was visited) as similar to how “a television channel might choose to present a commercial for children's toys during early morning cartoon programs but beer during an evening sporting event.” 792 F.3d. at 1369–70.

Moreover, the following decisions from our reviewing court have found similar concepts patent ineligible: *American Needle*, 2016 WL 6647774 (mem.) (affirming the district court’s holding that “providing a

visual aide to purchasing over the internet” is an abstract idea); *Cyberfone Sys., LLC v. CNN Interactive Grp.*, 558 Fed. Appx. 988 (Fed. Cir. 2014) (affirming the district court’s holding that using categories to organize, store, and transmit information is well-established and the idea of collecting information and then separating and transmitting that information according to its classification is patent ineligible); *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343 (Fed. Cir. 2014) (cert. denied, 136 S. Ct. 119 (2015) (data collection, recognition, and storage is undisputedly well-known and collecting data, recognizing certain data within the collected data set, and storing that recognized data in a memory is patent ineligible); *Concaten, Inc. AmeriTrak Fleet Solutions, LLC*, 2016 WL 5899749 (Fed. Cir. 2016) (mem.) (cert. denied), 2017 WL 1001313 (2017) (receiving, processing, and transmitting data is patent ineligible); *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) (holding that collecting information, analyzing it, and displaying certain results of the collection and analysis is patent ineligible). Under our precedent, Appellants’ method of tailoring (highlighting) the display of reviews for an item of sale based on known user information is an abstract idea.

For all the above reasons, claim 17 recites a judicial exception under the Guidance’s groupings of abstract ideas.

Is claim 17 “directed to” the recited judicial exception?

We next determine whether the recited judicial exception is integrated into a practical application. Guidance, 84 Fed. Reg. at 51. The claim may

integrate the judicial exception when, for example, it reflects an improvement to technology or a technical field. *Id.* at 55. When a claim recites a judicial exception and fails to integrate the exception into a practical application, the claim is “directed to” the judicial exception. *Id.* at 51.

In *Enfish*, the Federal Circuit noted “[s]oftware can make non-abstract improvements to computer technology just as hardware improvements can[.]” *Enfish*, 822 F.3d at 1335. The court asked “whether the focus of the claims is on [a] 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.” *Id.* at 1335–36. There, the “plain focus of the claims” was on an improvement to computer functionality itself, a self-referential table for a computer database designed to improve the way a computer carries out its basic functions of storing and retrieving data. *Id.* And, the court in *McRO*³ asked whether the claims as a whole “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” 837 F.3d at 1314.

We determine that claim 17 as a whole is focused on a result; that is, “determin[ing] that a user who has requested that a list of reviews be displayed is the same user who had previously submitted a review found in the list of reviews.” Spec., Abstract; Original Claim 1. There is a fundamental difference between computer functionality improvements, on the one hand, and uses of existing computers as tools to perform a particular

³ *McRO, Inc. v. Bandai Namco Games Am.*, 837 F.3d 1299 (Fed. Cir. 2016).

task, on the other. We find no parallel between claim 17 and the claims in *Enfish*, nor any comparable aspect in claim 17 that represents an improvement to computer functionality. Unlike *Enfish*, claim 17 is not focused on an improvement to computer capabilities or functionality (i.e., an improved web server). *Cf. In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016) (The claims' focus "was not on an improved telephone unit or an improved server."). Appellants' assertion that "[t]he claim addresses a business challenge that is particular to the Internet (displaying user reviews on a website and preventing users from submitting multiple user reviews on the website)" is admittedly not focused on a specific means or process that improves computer technology, but rather, on improving the integrity of reviews as part of advertising an item for sale, for which a computer is used as a tool in its ordinary capacity. Regardless of where reviews for an item are provided (on the web, in printed publications, on radio/tv, on bulletin boards, etc.) by customers, to maintain the integrity of reviews and help generate consumer confidence and sales, each seller would limit each user to a single review for the item. The advance over the prior art here lies in helping retailers generate sales by maintaining the integrity of consumer product reviews, which is an improvement in managing a marketing technique because consumers often rely on reviews before making a purchase decision, instead of an improvement in computer technology. In other words, the claimed invention compares a current user identification against a roster of users that have previously left reviews, to determine if the current user appears on that roster and previously submitted a review. We agree with the Examiner that using collected data for

comparing the current reviewer identification with identifications of the previous reviewers on the list of reviews is unlike the technology-based integration in *McRO*, which focused on a specific asserted improvement in computer animation. Ans. 5.

Appellants argue that “none of the features in the independent claims is *per se* abstract; rather, the features relate to physical, concrete actions performed by the processor to achieve the intended objectives of the invention.” App. Br. 10. This argument is unpersuasive of Examiner error at least because “not every claim that recites concrete, tangible components escapes the reach of the abstract-idea inquiry.” *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016). Although claim 17 recites physical components (e.g., client computer, web server), the focus of claim 17 is not on the improvement of any technology or technical field, but rather on a result that is the abstract idea. The recited computer in communication with a web server via a network merely provides the generic environment in which to implement the abstract idea.

As such, we agree with the Examiner that claim 1 is *directed to a* judicial exception.

Alice Step 2

“Well-understood, routine, conventional activities?”

To determine whether a claim provides an inventive concept, the additional elements are considered—individually and in combination—to determine whether they (1) add a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field or (2) simply append well-understood, routine, conventional activities

previously known to the industry, specified at a high level of generality, to the judicial exception. Guidance, 84 Fed. Reg. at 56.

Appellants argue: “Like the present application, *DDR Holdings*⁴ related to an inventive concept for resolving an Internet-centric problem.” App. Br. 11; Reply Br. 2. “Appellants submit, however, that displaying reviews on an Internet website as claimed is indeed unique to the Internet.” *Id.* at 12.

We disagree that the mere “displaying [of] reviews on an Internet website” is rooted in computer technology. In fact, the court in *DDR Holdings* cautioned “that not all claims purporting to address Internet-centric challenges are eligible for patent.” *DDR Holdings*, 773 F.3d at 1258. For example, the court distinguished the patent-eligible claims at issue from claims held patent-ineligible in *Ultramercial*. *See id.* at 1258–59 (citing *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715–16 (Fed. Cir. 2014)). As noted there, the *Ultramercial* claims were “‘directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.’” *Id.* at 1258 (quoting *Ultramercial*, 772 F.3d at 714). Nevertheless, those claims were patent ineligible because they “merely recite[d] the abstract idea of ‘offering media content in exchange for viewing an advertisement,’ along with ‘routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.’” *Id.* (citation omitted).

⁴ *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

To qualify as an inventive concept, the implementation of the abstract idea must involve “more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347–48 (Fed. Cir. 2014) (alteration in original) (quoting *Alice*, 134 S. Ct. at 2359). We agree with the Examiner that all of the steps performed are well-understood, routine, conventional activities previously known to the industry. Ans. 4–5. For example, a web server communicating with a client computer and displaying a retail website listing or enabling a user to log in on the website are conventional activities performed on a web browser. *See* Spec. ¶ 48. The determining step is simply a known information gathering and comparison operation for identifying a current user amongst a list of previous users, and thus adds little to patentably transform the abstract idea. Providing a web server and client computer that modify the display of information by highlighting and moving links are also well-known conventional practices performed by web-based software systems. *See* Spec. ¶ 46 (“Those skilled in the art will also appreciate that embodiments can also be applied within computer systems wherein tasks are performed by remote processing devices that are linked through a communications network (e.g., communication utilizing Internet or web-based software systems”).

We are not apprised of any claimed element for accomplishing the claimed solution that is other than what was generically known for performing those conventional functions. We do not see, and Appellants do not adequately explain, what particular assertedly inventive technology for performing the recited functions is required for achieving the claimed result.

See Credit Acceptance Corp. v. Westlake Servs., 859 F.3d 1044, 1057 (Fed. Cir. 2017) (“[T]he claims do not provide details as to any non-conventional software for enhancing the financing process.”); *see Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (“Our law demands more” than claim language that “provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it.”); *Elec. Power Grp.*, 830 F.3d 1350, 1354 (explaining that claims are directed to an abstract idea where they do not recite “any particular assertedly inventive technology for performing [conventional] functions”). Despite Appellants’ assertions that the claim steps add enough to make the claims patentable, we find the bare recitation of the steps performed in a generic computing environment at a high level of generality is insufficient to supply an inventive concept. The recited claim limitations, both individually and as an ordered combination, fail to transform the nature of the claims into a patent-eligible application.

For the foregoing reasons, we sustain the rejection of claim 17 as covering subject matter that is judicially-excepted from patent eligibility under § 101, including claims 1 and 9, which fall with claim 17. We also sustain the rejection of dependent claims 2, 4, 6–8, 10–12, 18, and 20, which are not argued separately.

Appeal 2018-006691
Application 13/339,164

DECISION

The Examiner's rejection under 35 U.S.C. § 101 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).

AFFIRMED