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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DEANNA LAWRENCE

Appeal 2018-008789
Application 14/262,154
Technology Center 3600

Before PHILIP J. HOFFMANN, KENNETH G. SCHOPFER, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–8. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

ILLUSTRATIVE CLAIM

1. A computer implemented method for providing social media data to brands, the method comprising:

pairing a user with a brand in response to the user requesting a connection with the brand, wherein the brand is an entity advertising products through social media;

creating a privacy agreement between the user and the brand, the privacy agreement specifying one of a plurality of predefined tiers of social media data authorized by the user to be shared electronically over a network with the brand;

receiving social media data related to the user;

creating, via a computer, a user data package that includes at least a portion of the social media data, wherein the user data package includes data based on instructions from the brand specifying user characteristics of interest to the brand;

removing data from the user data package that is excluded according to the tier of social media data of the privacy agreement to create a filtered data package; and

sending the filtered data package to the brand.

CITED REFERENCES

The Examiner relies upon the following references:

Higgins et al. US 2010/0082403 A1 April 1, 2010
(hereinafter “Higgins”)

Wolfe et al. US 2015/0149282 A1 May 28, 2015
(hereinafter “Wolfe”)

REJECTIONS

I. Claims 1–8 are rejected under 35 U.S.C. § 101 as ineligible subject matter.

II. Claims 1–8 are rejected under 35 U.S.C. § 103(a) as unpatentable over Higgins and Wolfe.

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

ANALYSIS

Subject-Matter Eligibility

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. Yet, subject matter belonging to any of the statutory categories may, nevertheless, be ineligible for patenting. The Supreme Court has interpreted § 101 to exclude laws of nature, natural phenomena, and abstract ideas, because they are regarded as the basic tools of scientific and technological work, such that including them within the domain of patent protection would risk inhibiting future innovation premised upon them. *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013).

Of course, “[a]t some level, ‘all inventions . . . embody, use, reflect, rest upon, or apply’” these basic tools of scientific and technological work. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). Accordingly, evaluating ineligible subject matter, under these judicial exclusions, involves a two-step framework for “distinguish[ing] between patents that claim the buildin[g] block[s] of human ingenuity and those that integrate the building blocks into something more, thereby transform[ing] them into a patent-eligible invention.” *Id.* (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 88–89 (2012)). The first step determines whether the claim is directed to judicially excluded subject matter (such as a so-called “abstract idea”); the second step determines whether there are any

“additional elements” recited in the claim that (either individually or as an “ordered combination”) amount to “significantly more” than the identified judicially excepted subject matter itself. *Id.* at 217–18.

The USPTO recently published revised guidance on the application of § 101, in accordance with judicial precedent. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 52 (Jan. 7, 2019) (“*2019 Revised Guidance*”). Under the *2019 Revised Guidance*, a claim is “directed to” an abstract idea, only if the claim recites any of (1) mathematical concepts, (2) certain methods of organizing human activity, and (3) mental processes — without integrating such abstract idea into a “practical application,” i.e., without “apply[ing], rely[ing] on, or us[ing] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *Id.* at 52–55. The considerations articulated in MANUAL OF PATENT EXAMINING PROCEDURE § 2106.05(a)–(c) and (e)–(h) (“MPEP”) bear upon whether a claim element (or combination of elements) integrates an abstract idea into a practical application. *Id.* at 55. A claim that is “directed to” an abstract idea constitutes ineligible subject matter, unless the claim recites an additional element (or combination of elements) amounting to significantly more than the abstract idea. *Id.* at 56.

Although created “[i]n accordance with judicial precedent” (*id.* at 52), the *2019 Revised Guidance* enumerates the analytical steps differently than the Supreme Court’s *Alice* opinion. Step 1 of the *2019 Revised Guidance* addresses whether the claimed subject matter falls within any of the statutory categories of § 101. *Id.* at 53–54. Step 2A, Prong One, concerns whether the claim at issue recites ineligible subject matter and, if an abstract idea is

recited, Step 2A, Prong Two, addresses whether the recited abstract idea is integrated into a practical application. *Id.* at 54–55. Unless such integration exists, the analysis proceeds to Step 2B, in order to determine whether any additional element (or combination of elements) amounts to significantly more than the identified abstract idea. *Id.* at 56.

The Appellant argues claims 1–8 as a group. Appeal Br. 4–7. Claim 1 is selected for analysis herein. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Neither the Examiner nor the Appellant questions the satisfaction of Step 1 of the *2019 Revised Guidance* — i.e., that the claims are drawn to subject matter within the scope of § 101.

With regard to the inquiry of Step 2A, Prong One, the Final Office Action addresses the following limitations of independent claim 1:

pairing a user with a brand in response to the user requesting a connection with the brand, wherein the brand is an entity advertising products through social media;

creating a privacy agreement between the user and the brand, the privacy agreement specifying one of a plurality of predefined tiers of social media data authorized by the user to be shared electronically over a network with the brand;

receiving social media data related to the user;

creating, via a computer, a user data package that includes at least a portion of the social media data, wherein the user data package includes data based on instructions from the brand specifying user characteristics of interest to the brand;

removing data from the user data package that is excluded according to the tier of social media data of the privacy agreement to create a filtered data package; and

sending the filtered data package to the brand.

See Final Action 3. According to the Examiner, these limitations describe the concept of “providing social media data to brands, by customizing

information based on information known about the user,” which the Examiner regards as “an idea of itself and/or methods of organizing human activities” amounting to an “abstract idea.” *Id.* The Examiner supports this determination, with reference to *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369–70 (Fed. Cir. 2015), which regarded the concept of tailoring information presented to a user, based upon information about the user — such as presenting “tailored advertisements based on the time of day during which the advertisement was viewed” — as “an abstract, overly broad concept long-practiced in our society.”

Viewed through the lens of the *2019 Revised Guidance*, 84 Fed. Reg. at 52, the identified claim limitations depict the claimed subject matter as one of the ineligible “[c]ertain methods of organizing human activity” that include “commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations).” Notably, claim 1 recites “creating a privacy agreement between the user and the brand” that determines the type of data about the user that that brand may receive.

The Appellant does not address the portion of the Examiner’s analysis corresponding to Step 2A, Prong One, of the *2019 Revised Guidance*, 84 Fed. Reg. at 54. Therefore, we are not persuaded of any error, in regard to Step 2A, Prong One.

Turning to Step 2A, Prong Two, unless a claim that recites a judicial exception (such as an abstract idea) “integrates the recited judicial exception into a practical application of that exception,” the claim is “directed to” the judicial exception. *Id.* at 53. The analysis of such an “integration into a practical application” involves “[i]dentifying . . . any additional elements

recited in the claim beyond the judicial exception(s)” and “evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.” *Id.* at 54–55.

Among the considerations “indicative that an additional element (or combination of elements) may have integrated the exception into a practical application” is whether “[a]n additional element reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field.” *Id.* at 55 (footnote omitted). “[W]hether an additional element or combination of elements integrate the exception into a practical application should be evaluated on the claim as a whole.” *Id.* at 55 n.24.

In regard to the inquiries of Step 2A, Prong Two, the Appellant argues that the claims “represent an atypical approach in user approval for data access, in allowing a user to specify, on a brand by brand basis, elements and categories of user data that brand can access.” Appeal Br. 4. Further, according to the Appellant:

Instead of generically approving access, the user can individually specify what data a brand can access, and this is both an atypical solution and one that improves the data flow between consumers and brands by allowing certain trusted or preferred brands to access certain data without having to give blanket approval. Similarly, disfavored brands can be blocked without having to block access to preferred or approved brands.

Id.

Yet, claim 1 does not recite the features of “specify[ing], on a brand by brand basis, elements and categories of user data that brand can access” or “block[ing]” “disfavored brands” (*see id.*); therefore, these features cannot confer patent-eligibility.

Moreover, the aspects of the recited subject matter that the Appellant contends to “improve[] the data flow between consumers and brands” (i.e., “allowing certain trusted or preferred brands to access certain data without having to give blanket approval”) (*id.*) are encompassed by the claim limitations that constitute the identified judicially excepted abstract concept, as discussed above, i.e., they are part of the abstract concept. Therefore, the subject matter alleged to amount to an improvement does not include any “additional elements recited in the claim beyond the judicial exception[],” such that it cannot be relied upon to “integrate[] the recited judicial exception into a practical application of that exception.” *2019 Revised Guidance*, 84 Fed. Reg. at 54–55.

Therefore, we are not persuaded of any error, with respect to Step 2A, Prong Two, of the *2019 Revised Guidance*.

Turning to Step 2B of the *2019 Revised Guidance* (*id.* at 56), a claim that recites a judicial exception (such as an abstract idea) might, nevertheless, be patent-eligible, if the claim contains “additional elements amount[ing] to significantly more than the exception itself” — i.e., “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present.” *See Alice*, 573 U.S. at 223 (“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”)

The Examiner’s position is that the only such elements of claim 1 — i.e., other than those describing the identified abstract idea itself — involve well-understood, routine, and conventional computer network functionality. *See* Final Action 4.

The Appellant argues that the Examiner does not “consider the *actual* language of the claims” and “fails to consider the effect of the elements working in conjunction” (*see* Appeal Br. 4), in determining whether claim 1 contains significantly more than the identified abstract idea. The Appellant emphasizes the principle that well-known components might be arranged in a non-conventional and non-generic way, so as to constitute significantly more than an identified abstract idea. *Id.* at 6. *See BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016) (“[A]n inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.”)

Yet, it is unclear which limitations of claim 1 — even if regarded in combination — are alleged to amount to significantly more than the abstract idea. Insofar as the Appellant relies upon the same claim features discussed above, in regard to Step 2A, Prong Two (*see* Appeal Br. 4), the Appellants do not identify any additional element(s), but instead purport to rely upon claim limitations describing the identified abstract idea. Indeed, as the Federal Circuit has explained, “[i]t has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

Therefore, the Appellant does not persuade us of error in the rejection, with regard to the inquiry of Step 2B.

Accordingly, in view of the foregoing analysis, we sustain the rejection of claims 1–8 under 35 U.S.C. § 101.

Obviousness

The Appellant presents several arguments for error in the rejection of claims 1–8 as obvious over Higgins and Wolfe.

The Appellant concedes that Higgins teaches independent claim 1’s recitation of an “agreement between the user and the brand,” but the Appellant argues that “nothing in Wolfe fills in the missing details as to what that agreement will include.” Appeal Br. 9. In particular, the Appellant contends that the cited prior art lacks the features of an “agreement” “specifying one of a plurality of predefined tiers of social media data authorized by the user to be shared electronically over a network with the brand.” *See id.*

The Appellant’s argument is unpersuasive, in this regard. To the contrary, Wolfe’s disclosure adequately supports the Examiner’s position. *See* Final Action 6. *See also* Answer 4. In particular, Wolfe states: “The social networking platform of the present invention can be a public platform, a semi-private platform, or a private platform. The level of privacy may be customizable according to member preference.” Wolfe ¶ 8. *See also id.* ¶ 15 (“The user groups can be private/semi-private/public.”) Wolfe further states: “The whole system is built on a powerful permissions and sharing model that gives the owner of a piece of content the ability to selectively share it with individuals or groups of members, and to control the permissions that those viewers of the content have.” *Id.* ¶ 17. According to Wolfe:

A user’s personal information is private and it is theirs rather than the social platform provider’s. Users own their content and all of their data, and share according to their level of comfort with privacy issues. Users are in control of who can

see information about them and posted by them. The social platform provider will by default refrain from making user data being available for searching, advertisement placement etc. unless the user wants that. The platform provider typically will not suggest contacts, friends, or “people you might know”, to users. Permissions and privacy are considered as user rights. Embodiments of the invention make it easy for users to deny or give access to any content they create. Embodiments of the invention ensure tracking, profiling, sharing of personal information are disabled without specific content from the user.

Id. ¶ 40. We find that Wolfe’s capacity to permit a user to deploy particular degrees of sharing information satisfies claim 1’s limitation of “specifying one of a plurality of predefined tiers of social media data authorized by the user to be shared electronically over a network with the brand.”

The Appellant also argues that Wolfe fails to teach or suggest claim 1’s “user data package includ[ing] data based on instructions from the brand specifying user characteristics of interest to the brand.” Appeal Br. 9. Yet, we agree with the Examiner (*see* Answer 5) that Wolfe sufficiently discloses the limitation, stating, for example:

The individual can choose from a selection of consumer goods and services, for example, by starting at a top/gross level ad categories, and then optionally drilling down to select sub categories. *Alternatively or additionally, the selection may be from specific companies and the sub categories, from specific products and/or services offered by the companies etc., as selected by the user.*

Wolfe ¶ 79 (emphasis added). Presenting a user with options to select “from specific companies and . . . from specific products and/or services offered by the companies,” thereby providing the user’s information relating thereto (per Wolfe ¶ 79), sufficiently discloses claim 1’s “data based on instructions from the brand specifying user characteristics of interest to the brand.”

The Appellant also argues that the Examiner erred in rejecting claim 1, because the cited prior art does not teach or suggest the recited “removing data from the user data package that is excluded according to the tier of social media data of the privacy agreement.” *See* Appeal Br. 9–10. The Appellant contends that there is no basis for combining/modifying Higgins and Wolfe to achieve the identified limitation, because “there is no correlation of data to a tier of social media anywhere in the prior art.” *Id.* at 10.

To the contrary, as discussed above, there is adequate support for Examiner’s finding that Wolfe does correlate privacy tiers with access to particular aspects of user data. *See* Final Action 6; Answer 4. Furthermore, as the Examiner indicates (*see* Final Action 5), Higgins discloses the “removing data” feature, such that — in combination with Wolfe (*see id.* at 4–5) — the cited references meet the identified limitation. Notably, Higgins discloses “[a] ‘W4 Communications Network’ or W4 COMN” that “provides information related to the ‘Who, What, When and Where’ of interactions within the network,” which performs (among other functions) “filtering, . . . deleting, [and] privacy” “on any communication channel accessible by the W4 COMN.” Higgins ¶¶ 34–35. Accordingly, we are not persuaded by the Appellant’s argument that the cited prior art fails to teach or suggest claim 1’s “removing data from the user data package that is excluded according to the tier of social media data of the privacy agreement.”

Nor are we persuaded by the Appellant’s essentially similar argument (*see* Appeal Br. 10) that the cited prior art fails to teach the limitation, in independent claim 8, of “a processor . . . programmed to . . . *filter* the data to

block access to data excluded by the predetermined privacy settings according to the specified tier” (emphasis added). According to the Appellant,

there is still no support for the obviousness contention with regards to data filtering before package assembly, any more than data removal after package assembly, when that data is filtered/removed based on a correlation between the data and a tier of social media, based on a definition in a privacy agreement.

Id. Yet, as discussed above, Wolfe adequately teaches such a correlation. *See* Final Action 6; Answer 4. Further, Higgins teaches claim 8’s “filter[ing]” data, in addition to claim 1’s “removing” data. *See* Higgins ¶ 35 (describing “filtering, . . . deleting, [and] privacy” “on any communication channel accessible by the W4 COMN.”)

In view of the foregoing the Appellant’s arguments do not persuade us of error in the rejection of independent claim 1, claims 2–7 depending therefrom (for which no separate arguments are presented), and independent claim 8 under 35 U.S.C. § 103(a).

DECISION

We AFFIRM the Examiner’s decision rejecting claims 1–8 under 35 U.S.C. § 101.

We AFFIRM the Examiner’s decision rejecting claims 1–8 under 35 U.S.C. § 103(a).

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