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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SANJAY S. VAKIL, STEPHEN KAUFER,
and ADAM ROSENBERG

Appeal 2019-001271
Application 13/491,416
Technology Center 3600

Before RICHARD M. LEBOVITZ, RYAN H. FLAX, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

LEBOVITZ, *Administrative Patent Judge*.

DECISION ON APPEAL

The Examiner rejected the claims under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter and under 35 U.S.C. § 103 as obvious. Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject the claims. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as TripAdvisor LLC. Br. 5.

STATEMENT OF THE CASE

The claims stand rejected by the Examiner as follows:

1. Claims 1–33 under 35 U.S.C. § 101 (2006) because the claimed invention is directed to a judicial exception to patent-eligibility. Non-Final Act. 12.

2. Claims 1–24 and 33 under pre-AIA 35 U.S.C. § 103(a) (2006) as obvious in view of Crawford (US 2007/0214180 A1, published Sept. 13, 2007) and Tseng (US 2012/0310968 A1, published Dec. 6, 2012). Non-Final Act. 16.

3. Claims 25–32 under pre-AIA 35 U.S.C. § 103(a) as obvious in view of Crawford, Tseng, and Siddique et al. (US 2010/0030578 A1, published Feb. 4, 2010) (“Siddique”). Non-Final Act. 40.

There are four independent claims, claims 1, 5, 16, and 25.

Appellants made the same arguments for each independent claim. Appeal Br. 23–29, 33–38. Therefore, we have selected claim 1 as representative. Claim 1 is reproduced below (bracketed numbering has been added for reference to the claim limitations):

1. A system for identifying users of a traveler’s social network who may possess travel information of interest to the traveler, the system comprising:

[1] one or more data stores that store information regarding users of an electronic social networking service; and
[2] a computing device in communication with the one or more data stores, the computing device operative to:

[3] receive, from a traveler computing device, a request for travel information of interest to the traveler;

[4] identify at least one user of the electronic social networking service that is associated with the traveler;

[5] request information regarding the at least one user from at least one of the electronic social networking service and another network-based service;

[6] determine, from the information that is requested, a location associated with the at least one user based at least in part on geotagged location information associated with the at least one user;

[7] determine that the location associated with the at least one user corresponds to the travel information of interest;

[8] generate instructions that, when executed on the traveler computing device, cause the traveler computing device to generate a message for delivery to a computing device of the at least one user;

[9] generate a user interface object for presentation on a user interface of the traveler computing device,

[10] wherein the user interface object represents the at least one user and signifies that the traveler may contact the at least one user with the user interface object,

wherein the user interface object comprises:

[10a] the instructions, and

[10b] media identifying the user that is associated with the traveler, and

[11] wherein selection of the user interface object via the user interface of the traveler computing device causes the traveler computing device to execute the instructions; and

[12] transmit the user interface object to the traveler computing device for presentation on the user interface.

Appellant did not provide separate arguments for dependent claims 2–4, 6–15, 17–24, and 26–33 or argue the obviousness rejections separately. Appeal Br. 23–29, 33–38. These claims therefore all stand or fall together. 37 C.F.R. § 41.37(c)(1)(iv). We address both obviousness rejections together.

1. REJECTION BASED ON §101

Principles of Law

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.” However, not every discovery is eligible for patent protection. *Diamond v. Diehr*, 450 U.S. 175, 185 (1981). “Excluded from such patent protection are laws of nature, natural phenomena, and abstract ideas.” *Id.* The Supreme Court articulated a two-step analysis to determine whether a claim falls within an excluded category of invention. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014); *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66, 75–77 (2012).

In the first step, it is determined “whether the claims at issue are directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If it is determined that the claims are directed to an ineligible concept, then the second step of the two-part analysis is applied in which it is asked “[w]hat else is there in the claims before us?” *Id.* The Court explained that this step involves

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.’

Alice, 573 U.S. at 217–18 (citing *Mayo*, 566 U.S. at 75–77).

Alice, relying on the analysis in *Mayo* of a claim directed to a law of nature, stated that in the second part of the analysis, “the elements of each claim both individually and ‘as an ordered combination’” must be considered “to determine whether the additional elements ‘transform the

nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (citing *Mayo*, 566 U.S. at 79, 78).

The PTO published revised guidance on the application of 35 U.S.C. § 101. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 51–57 (2019) (“2019 Eligibility Guidance”). This guidance provides additional direction on how to implement the two-part analysis of *Mayo* and *Alice*.

Step 2A, Prong One, of the 2019 Eligibility Guidance, looks at the specific limitations in the claim to determine whether the claim recites a judicial exception to patent eligibility. In Step 2A, Prong Two, the claims are examined to identify whether there are additional elements in the claims that integrate the exception in a practical application, namely, is there a “meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” 84 Fed. Reg. 54 (2. Prong Two).

If the claim recites a judicial exception that is not integrated into a practical application, then as in the *Mayo/Alice* framework, Step 2B of the Eligibility Guidance instructs us to determine whether there is a claimed inventive concept to ensure that the claims define an invention that is significantly more than the ineligible concept, itself. 84 Fed. Reg. 56. In making this determination, we must consider whether there are specific limitations or elements recited in the claim “that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present” or whether the claim “simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception,

indicative that an inventive concept may not be present.” 84 Fed. Reg. 56 (footnote omitted).

With these guiding principles in mind, we proceed to determine whether the claimed subject matter in this appeal is eligible for patent protection under 35 U.S.C. § 101.

Discussion

Claim 1 is directed to a system “for identifying users of a traveler’s social network who may possess travel information of interest to the traveler.” The system comprises [2] a computing device operative to carry out a method comprising steps [3]–[12]. A computing device is a “machine,” one of the four categories of patent-eligible subject matter enumerated in 35 U.S.C. § 101. We thus proceed to Step 2A, Prong One, of the 2019 Eligibility Guidance, to consider whether the claim is directed to a judicial exception to patent eligibility under § 101.

Step 2A, Prong One

In Step 2A, Prong One, the specific limitations in the claim are examined to determine whether the claim recites a judicial exception to patent eligibility, namely whether the claim recites an abstract idea, law of nature, or natural phenomenon. 84 Fed. Reg. 54. The Examiner found that the claims are directed to certain methods of organizing human activity (Non-Final Act. 3, 13), which is one of the three groupings listed in the 2019 Eligibility Guidance as a patent-ineligible abstract idea. 84 Fed. Reg. 52.

The first step of the method that can be implemented on the [2] computing device is [3] receiving a request for travel information of interest to a traveler from a “traveler computing device.”

At least one user can be identified in step [4] who is a user of an “electronic social networking service that is associated with the traveler” of step [3]. The Specification defines social network services as including “services that enable users to register with the service, to store and share selected user information with other users, and to view selected information of other users.” Spec. ¶ 22. The Specification explains that “users may identify the other users by indicating that these users are ‘friends’ or as individuals who they are ‘following’.” *Id.*

Once the user is identified in step [4], information about the user can be requested from the electronic social networking service and “another network-based service” in step [5]. The Specification discloses that a network-based service may include:

network-based travel services such as those that provide travel information authored by registered users of the service, network-based retailers that sell travel items (e.g., flights, hotels, auto rentals, etc.) for purchase, network-based sources of entertainment and/or information (e.g., travel applications, electronic guidebooks, network-based encyclopedias, media sharing, etc.), and the like.

Spec. ¶ 36.

A location of the user can be determined in step [6], and in step [7], whether the location associated with the user corresponds to the travel information of interest requested by the traveler in step [3] can be determined.

In sum, in steps [3]–[7] of the method “operative” on the computing device, it is determined whether a user of the same social network as the traveler is associated with a location that the traveler has requested travel information about. These steps involve “managing . . . interactions between

people (including social activities . . .)” which is described in the 2019 Eligibility Guidance as the abstract idea of “[c]ertain methods of organizing human activity.” 84 Fed. Reg. 52. We therefore agree with the Examiner the claim 1 recites an abstract idea.

In subsequent step [8] of claim 1, instructions are generated “that, when executed on the traveler computing device, cause the traveler computing device to generate a message for delivery to a computing device of the at least one user.” This message is executed when a “user interface object” is generated and transmitted on the “traveler computing device” in steps [9] and [12], and then selected in step [11]. Thus, steps [8]–[12] facilitate communication between a traveler and a user of the same electronic social network as the traveler, where the user is associated with the travel location about which the traveler has requested information. These steps also recite the abstract idea of “[c]ertain methods of organizing human activity” because they manage interactions, specifically communication, between people. *See* 84 Fed. Reg. 52.

While the steps of the method are performed on a computer, the Supreme Court in *Alice* found that the implementation of a method on a generic computer “fail[s] to transform that abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 221. We therefore proceed to Step 2A, Prong 2 of the analysis to determine whether the abstract ideas are integrated into a practical application. 84 Fed. Reg. 54.

Step 2A, Prong Two

Prong Two of Step 2A under the 2019 Eligibility Guidance asks whether there are additional elements that integrate the exception into a practical application. 84 Fed. Reg. 54. As in the *Mayo/Alice* framework, we

must look at the claim elements individually and “as an ordered combination” to determine whether the additional elements integrate the recited abstract idea into a practical application. As discussed in the 2019 Guidance, “[a] claim that integrates a judicial exception in a practical application will apply, rely on, or use the judicial exception in a manner that places a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” 84 Fed. Reg. 54. Integration into a practical application is evaluated by identifying whether there are additional element individually, and in combination, which go beyond the judicial exception. *Id.* at 54–55. As explained in the October 2019 Update to Subject Matter Eligibility,² “first the specification should be evaluated to determine if the disclosure provides sufficient details such that one of ordinary skill in the art would recognize the claimed invention as providing an improvement.” 2019 Oct. PEG Update 12. Furthermore, the 2019 Oct. PEG Update explains that the “specification need not explicitly set forth the improvement, but it must describe the invention such that the improvement would be apparent to one of ordinary skill in the art.” *Id.*

The Specification describes its invention as relating “to travel recommendations and, in particular, to identifying members of a traveler’s social network that may provide knowledge regarding travel information of interest to the traveler.” Spec. ¶ 11. This corresponds to steps [3]–[7] of

² Available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf (last accessed Nov. 15, 2019) (“2019 Oct. PEG Update”).

claim 1. The recommendations would be obtained by the steps recited in [8]–[12] of claim 1.

In challenging the Examiner’s determination that the claims are directed to an abstract idea, Appellant argues that the claims “are not directed to the concept of ‘identifying members of a traveler’s social network that may provide knowledge regarding travel information of interest to the traveler,’ as alleged in the Office Action,” because they also recite generating a “user interface object” that, when selected, causes the traveler computing device to execute instructions as in step [11] of claim 1. Appeal Br. 18–19. Appellant contends that steps [8]–[12] of claim 1 constitute a patent-eligible improvement to computer technology that add significantly more to any abstract idea recited in the claims. *Id.* at 20, 23. In support of this argument Appellant argues that the improvement is analogous to the type of computer improvement found to be patent-eligible in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014), and *Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018). Appeal Br. 15.

While Appellant identifies the improvement as the steps of generating [8] instructions and [9] a user interface object that enables a message to be sent to a user device when the user interface object is selected in step [11], the claims do not specify how these steps are implemented. Business method claims in *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (2016) were held to be ineligible for a patent under 35 U.S.C. § 101 because they did “not claim a particular way of programming or designing the software to create menus that have these features, but instead merely claim the resulting

systems.” The court held “the claims are directed to certain functionality—here, the ability to generate menus with certain features.” *Id.*

The rejected claims in this appeal have the same deficiency identified in *Apple v Ameranth*. The claims recite certain functions in steps [8]–[11], but do not recite how the functionalities of generating instructions and user objects are accomplished.

Another concern raised by the steps in the claim is preemption. In *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1315 (Fed. Cir. 2016), the court found that, while the *McRO* claims involved the manipulation of data, e.g., generating morph weight sets to animate lip and facial expressions of three dimensional characters, the claimed “automation goes beyond merely ‘organizing [existing] information into a new form’ or carrying out a fundamental economic practice.” *McRO*, 837 F.3d at 1315 (alternation in original) (quoting *Digitech Image Techs., LLC v. Elecs. For Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014)). Instead, the court found that the “claimed process uses a combined order of specific rules that renders information into a specific format that is then used and applied to create desired results: a sequence of synchronized, animated characters.” *Id.* The claims were therefore found to be directed to a “technological improvement over the existing, manual 3-D animation techniques.” *McRO*, 837 F.3d at 1316.

McRO further held that the “limitations in claim 1 prevent preemption of all processes for achieving automated lip-synchronization of 3-D characters.” *McRO*, 837 F.3d at 1315. The court explained that “[t]he specific structure of the claimed rules would prevent broad preemption of all rules-based means of automating lip synchronization.” *Id.* Steps [8]–[12]

— generating instructions [8], generating a user interface object [9] with instructions and media [10], and selecting the object to execute instructions [11], [12] — are recited in such general terms that utilizing the user interface object to send a message poses a risk that the abstract idea embodied in the claims would be preempted. As stated in *McRO*, 837 F.3d at 1314, we must “look to whether the claims in these patents focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” Here, the recited limitations are directed to a *result* which itself is an abstract idea of organizing human activity. Thus, steps [8]–[12] have the same eligibility deficiency discussed in *McRO*.

The Specification’s description of the claimed steps does not elucidate an improvement in computer technology as asserted by Appellant. For example, the Specification discloses that the invention “facilitate[s] communication between the traveler and one or more of the members selected from the traveler’s social network, allowing the traveler to obtain knowledge regarding the travel information of interest.” Spec. ¶ 33. The Specification discloses “mechanisms enabling communication between the traveler and one or more of the selected members,” including “short message service (SMS) messaging, MMS messaging, microblogs, instant messaging (IM), electronic mail, voice over internet protocol (VOIP), video conferencing, and other communication mechanisms *known in the art* and combinations thereof.” Spec. ¶ 34 (emphasis added). The Specification further discloses the “user interface object” of step of steps [9]–[12] as enabling the communication between the traveler and user. Spec. ¶¶ 70, 72, 73. However, none of the disclosures in the Specification teach how the

claimed instructions and user interface object are generated nor how the communication is facilitated except to the extent that the object is selected and communication enabled by a hyperlink (Spec ¶ 72: “Figure 3B illustrates user interface objects 362 that represent the identified members (e.g., hyperlinked images). By selecting one of the user interface objects 362, the traveler may view identifying information for the member represented by the selected user interface object 362.”). Hyperlinks were known in the art at the time of the invention. *See, e.g.*, Tseng ¶ 49; Siddique ¶ 198. Thus, a review of the Specification does not reveal a specific improvement to the technology, but rather uses known messaging systems and hyperlinks to accomplish the claimed steps. The claim limitations, themselves, state the result, but lack the specificity as to how the result is achieved, in contrast to the patent-eligible claims in *McRO*.

Appellant argues that the claims are like those in *Core Wireless* which described “an improved user interface.” Appeal Br. 20. In *Core Wireless*, 880 F.3d at 1362–63, the court found that the claims were “directed to a particular manner of summarizing and presenting information in electronic devices” that specified “a particular manner by which the summary window must be accessed” and disclosed “a specific manner of displaying a limited set of information to the user, rather than using conventional user interface methods to display a generic index on a computer.” *Id.* The court found that “these claims recite[d] a specific improvement over prior systems, resulting in an improved user interface for electronic devices.” *Id.* at 1363. The court further explained that “the disclosed invention improve[d] the efficiency of using the electronic device by bringing together ‘a limited list of common

functions and commonly accessed stored data,’ which can be accessed directly from the main menu.” *Id.*

Here, the only item displayed on the traveler computing device is the [10] user interface object comprising [10b] media identifying the user that is associated with the traveler. Appellant has not explained how such a display constitutes the type of patent-eligible improvement found in *Core Wireless* (characterized as bringing a list of common functions together and accessed in a manner that the court found not to be conventional or generic). *Core Wireless*, 880 F.3d at 1362–63. Rather, here, neither the claim nor the Specification describe an improvement in software functionality, but rather appear to use generic computer tools (such as messaging and hyperlinks) to carry out the claimed steps. Appellant asserts that the improvement is enabling “communication between travelers and members of their social networks who may have information of interest regarding a travel destination.” Appeal Br. 20. Appellant does not identify how the interface constitutes an improvement over other interfaces that enable communication between a first party and a second party wanting information from the first party. We have reviewed the Specification for evidence of the improvement, but, as explained above, found that a generic hyperlink may be used to implement the communication on known messaging systems (Spec. ¶¶ 72, 73).

Enfish, cited by Appellant, involved claims directed to a data storage and retrieval system for a computer system that comprised a logical table including logical rows and logical columns for indexing data in the table. *Enfish*, 822 F.3d at 1336. The *Enfish* court referred to the logical table as a “self-referential table” and found that the table functioned differently from

conventional databases and “is a specific type of data structure designed to improve the way a computer stores and retrieves data in memory.” *Id.* at 1336, 1339. Appellant has not explained how executing instructions that enable communication between a traveler and user in the same social network improves how a computer functions. The rejected claims at issue here recite the functions which are performed, but not a specific structure to accomplish the recited functions of steps [8]–[12].

Appellant asserts there is an improvement to computer technology because claim limitation [8] “generate[s] instructions that, when executed on the traveler computing device, cause the traveler computing device to generate a message for delivery to a computing device of the at least one user” (Appeal Br. 20), but this step itself is part of the abstract idea. It does not by itself constitute an “additional element” that reflects an improvement to computer technology, but instead is simply an implementation of the abstract idea on a computer which enables the traveler to contact the user on its device. “The Court in *Alice* made clear that a claim directed to an abstract idea does not move into section 101 eligibility territory by ‘merely requir[ing] generic computer implementation.’” *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (2014) (alteration in original) (quoting *Alice*, 573 U.S. at 221).

Appellant also asserts that there is an improvement to a user interface that facilitates communication between a traveler and user. Appeal Br. 20. The user interface in the claims comprises [9] “a user interface object for presentation on a user interface of the traveler computing device.” The display of the object on the interface is paired with a functionality that [11] cause the selection of the object to execute the instructions of step [8].

However, such functionality as explained in the Specification could be a hyperlink. Spec. ¶ 72. The Specification does not disclose that the functionality embodied in the user interface object “resolves a specifically identified problem in the prior state of the art” as it did in the patent eligible claims in *Trading Technologies International, Inc. v. CQG, Inc.*, 675 Fed. Appx. 1001, 1004 (Fed. Cir. 2017). Instead, these claim are like those in *Trading Technologies International, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (2019), where the court found that the claims ineligible for a patent because they did not “improve the functioning of the computer, make it operate more efficiently, or solve any technological problem,” but only assisted a trader in making an order. Likewise, the user interface object recited in rejected claim 1 simply displays media identifying a user and automates sending a message to the user. Appellant identified the user interface comprising the user interface object as the improvement, but does not identify a technological improvement. “The fact that this is a ‘computer-based method’ does not render the claims non-abstract.” *Trading Technologies Int’l, Inc. v. IBG LLC*, 921 F.3d at 1093.

Appellant does not provide any specific showing, either in the claim language or the Specification, of an improvement in the computer components, or that these components are being used in a unique or unconventional manner different from their ordinary purpose. Indeed, the Specification makes it clear that the steps involve general-purpose computer operations. (Spec. ¶ 76 (disclosing that “[a]ll of the processes described herein may be embodied in, and fully automated via software code modules executed by one or more general purpose computers or processors”).) Thus, the claim does not require a specialized machine or manufacture, and does

not transform an article to a different state. 84 Fed. Reg. 55; *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (“An abstract idea on ‘an Internet computer network’ or on a generic computer is still an abstract idea.”).

For the foregoing reasons, we conclude that the claims recite an abstract idea relating to certain methods of organizing human activity and the abstract idea is not integrated into a practical application.

Step 2B

Because we determined that the claims recite a judicial exception that is not integrated into a practical application, we proceed to Step 2B of the 2019 Guidelines, which asks, as in the *Mayo/Alice* framework, whether there is an inventive concept claimed. 84 Fed. Reg. 56. In making this Step 2B determination, we must consider whether there are specific limitations or elements recited in the claim “that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present” or whether the claim “simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, indicative that an inventive concept may not be present.” 84 Fed. Reg. 56 (footnote omitted). We also consider whether the combination of steps are performed “in an unconventional way and therefore include an ‘inventive step,’ rendering the claim eligible at Step 2B.” *Id.*

Appellant contends that the steps recited in the claim, particularly steps [8] and [9] “cannot be dismissed as generic or conventional activity. Rather, these recitations of Claim 1 represent a ‘non-conventional and non-generic arrangement’ of user interface elements and computing device

functionality, and apply the alleged judicial exception in a meaningful way.”
Appeal Br. 23. We have already considered how the claimed instructions are executed to cause the computing device to generate a message, and found that the Specification discloses that it could be accomplished with a hyperlink (Spec. ¶ 75), a known and routine computer functionality. Appellant has not persuaded us that the steps in which the user interface object is generated and displayed on the traveler computing device, either individually or as an ordered combination, are non-conventional, non-generic, or operate in a unique and unconventional manner.

Under Step 2B, we are not persuaded that the Examiner erred in determining that the limitations of claim 1, recited in addition to the abstract idea and considered individually and as an ordered combination, do not transform the claim into significantly more than the abstract idea. Claim 1 is not significantly more than instructions to apply the abstract idea of a certain method of organizing human activity using generic computer components. Under precedent, that is not enough to transform an abstract idea into a patent-eligible invention.

Summary

For the foregoing reasons, the rejection under § 101 of claims 1, 5, 16, and 25 is affirmed. Dependent claims 2–4, 6–15, 17–24, and 26–33 fall with the independent claims.

REJECTION BASED ON § 103

The Examiner determined that claims 1–24 and 33 would have been obvious based on Crawford and Tseng. The Examiner found that Crawford describes [2] a computing device that carries out steps [3]–[5] of claim 1. Non-Final Act. 16–17. The Examiner acknowledged that Crawford does

not describe determining location information as in steps [6] and [7] of claim 1, generating instructions for delivering a message as in step [8], or [9] generating a user interface object which provides the functions of steps [10]–[12] of the claim. Non-Final Act. 18. However, the Examiner found that Tseng discloses a method comprising these recited steps (*id.* at 18–22), and explained why it would have obvious to have combined Crawford and Tseng because Tseng “provides an efficient means for providing information and location-based services” (*id.* at 22–23).

Appellant contends that the Examiner invoked the “printed matter doctrine” and did not properly give patentable weight to the recited user interface object in steps [9]–[11] of the claims. Appeal Br. 31. Appellant states that the user interface object has a functional relationship with the “wherein” clause that recites [11] “selection of the user interface object via the user interface of the traveler computing device causes the traveler computing device to execute the instructions.” *Id.* at 32.

We are not persuaded by Appellant’s argument that the Examiner erred in rejecting the claims as obvious.

The Examiner stated that Tseng describes a “comment feature,” which the Examiner found to meet the claimed “user interface object.” Non-Final Act. 22. The Examiner also found that this feature allowed a user to “enter information and/or provide a comment to a traveler of Tseng.” *Id.* Thus, the Examiner found that the comment feature carried out the same function recited in limitation [11] of the claim of enabling communicating between the user and traveler, namely “wherein selection of the user interface object via the user interface of the traveler computing device causes the traveler computing device to execute the instructions.”

In making this finding about the “comment feature,” the Examiner stated that “the labels themselves carry little patentable weight” and cited *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) and *In re Lowry*, 32 F.3d 1579 (Fed Cir. 1994) as holding that “descriptive material will not distinguish the claimed invention from the prior art in terms of patentability.” Non-Final Act. 22. As indicated by Appellant, the latter two cases are also referred to as the “printed matter” cases. The Examiner referenced these two cases, and mentioned the descriptive matter as not distinguishing the claim over the prior art, because Tseng used a *different term* than the term recited in the claim for the same function required by element [11] of claim 1. The Examiner was making the point that while the “labels” used were different — “user interface object” in claim 1 and “comment” in Tseng — the label, or descriptive matter, did not distinguish the two elements because the function they perform is the same.

Appellant also argues that the “comment feature (406)” identified by the Examiner as meeting the recited user interface object is described in Tseng as “the time at which a user ‘checked in’ on a social media platform” and “does not teach or suggest the user interface object recited in Claim 1 at all, and further submits that none of the features disclosed in Fig. 4 of Tseng teach or suggest the recited user interface object.” Appeal Br. 33.

In referring to Figure 4 of Tseng, the Examiner interpreted the “comment feature (406)” as the location where information in the user interface can be entered and a comment provided to a traveler, meeting the function of the user interface object of claim 1. Non-Final Act. 22. Figure 4 of Tseng is reproduced below:

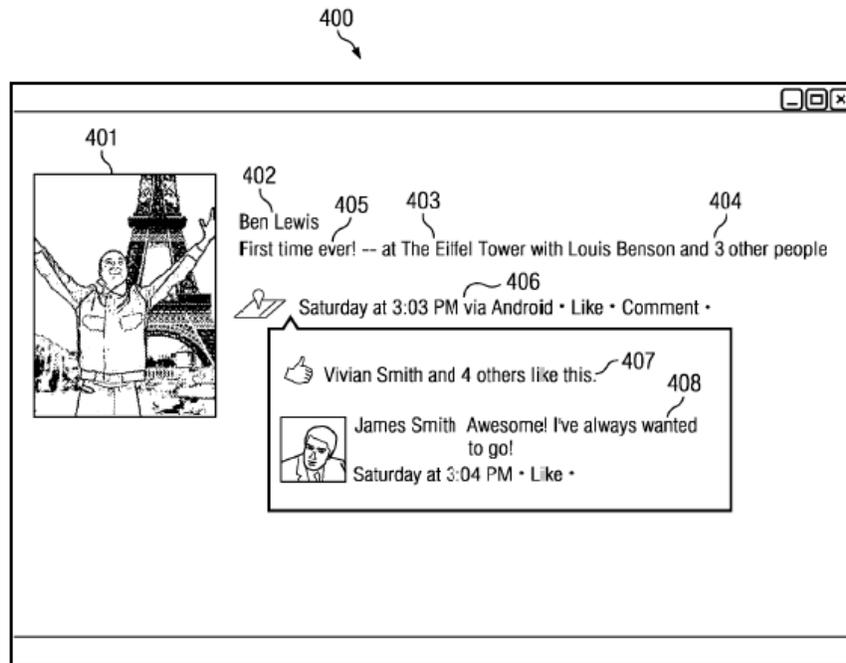


FIG. 4

Figure 4 of Tseng, reproduced above, shows an automatically generated “check-in.” Tseng ¶ 9. Tseng teaches that check-in 400 includes a profile picture 401 of a user checking in at a specific location (e.g. Ben Lewis 402 checking in at the Eiffel Tower 403). Tseng ¶ 45. Tseng discloses that “Check-in 400 also includes the time 406 of the check-in, and an interactive space 407 where other users may comment or express affinity for check-in 400.” *Id.*

It is true that the Examiner referenced 406 as the “comment feature” and user interface object of claim 1. Non-Final Act. 22. However, it is clear from the figure that the comment feature is actually labeled 407 in the figure and the Examiner correctly made this finding on the previous page of the Non-Final Office Action (citing “interactive space 407”). Non-Final Act. 21. Appellant did not provide an argument as to why the interactive space and comment function provided by Tseng did not meet the requirement of

the claimed user interface object as comprising [10b] media and enabling [11] “selection of the user interface object via the user interface of the traveler computing device causes the traveler computing device to execute the instructions” to [8] “cause the traveler computing device to generate a message for delivery to a computing device of the at least one user.” In other words, the traveler requesting travel information ([3] of claim 1) sees the media picture showing Ben Lewis at the Eiffel Tower and can send a message to him (James Smith sends a message through the user interface object (407) to Ben stating “Awesome! I’ve always wanted to go!” (Fig. 4 of Tseng reproduced above)). Accordingly, we conclude that the Examiner correctly determined that Tseng describes limitations [8]–[12] of claim 1.

Appellant argued that claims 5, 16, and 25 are also patentable over Crawford and Tseng. Appeal Br. 33–38. However, Appellant repeated the same arguments for these claims as for claim 1. Thus we find them unpersuasive for the same reasons, and specifically refer to Figure 4 and paragraph 45 of Tseng and providing the pertinent teachings as discussed above.

For the foregoing reasons, the rejection of claim 1 is affirmed.

Claims 2–4 depend directly or indirectly from Claim 1. Claims 6–15 depend directly or indirectly from Claim 5. Claims 17–24 depend directly or indirectly from Claim 16. Claims 26–33 depend directly or indirectly from Claim 25. Appellant contends that these claims are not obvious to one of ordinary skill in the art for the same reasons as to the respective independent claims. Appeal Br. 38. Thus, the rejections of these claims are affirmed for the same reasons.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-33	101	Eligibility	1-33	
1-24, 33	103	Crawford, Tseng	1-24, 33	
25-32	103	Crawford, Tseng, Siddique	25-32	
Overall Outcome			1-33	

TIME PERIOD

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)(iv).

AFFIRMED