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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AMRITA KAUSHIK and SAVTANTER GADOO

Appeal 2019-002128
Application 13/714,120
Technology Center 3600

Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and
NABEEL U. KHAN, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–3, 5–6, 9–15, and 17–23. Claims 4, 7–8, and 16 are cancelled. 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(a). Appellant identifies the real party in interest as eBay Inc. Appeal Br. 2.

STATEMENT OF THE CASE

Introduction

Appellant's invention relates to buyer-solicited offerings in online marketplaces. Spec. ¶ 1.

Representative Claim

Representative claim 1 under appeal read as follows;

1. A method comprising:

receiving, by at least one processor of a machine, a search request comprising a first item description, the first item description describing a first item using a plurality of terms, the search request received from a first client device;

determining that a group site described by the plurality of terms of the first item description does not exist on a network site;

in response to determining that the group site does not exist, generating the group site on the network site, the group site including a group characteristic corresponding to the plurality of terms;

generating a first item listing using the first item description received from the first client device;

causing a display of the first item listing as a post in the created group site that is browsable by members of the group site and at least one user associated with a second client device;

receiving, from the second client device, a second item description comprising a plurality of search terms that do not exactly match the plurality of terms in the first item description;

in response to the receiving the second item description, posting to the group site a second item listing using the second item description, the second item description specifying a first transaction condition;

receiving, from the first client device, a commitment corresponding to the second item description;

posting to the group site, a third item listing using a third item description received from a third client device, the third item listing having a second transaction condition that is different than the first transaction condition;

receiving, from the first client device, a revocation of the commitment;

responsive to receiving the revocation, decrementing a commitment count to produce an updated commitment count for the second item listing; and

transmitting to the group site, an update to the second item listing including the updated commitment count corresponding to the second item listing.

REJECTION

Claims 1–3, 5–6, 9–15, and 17–23 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. *See* Final Act. 11.

ANALYSIS

Appellant argues the pending claims as a group. Appeal Br. 9–27; Reply Br. 2–9. As permitted by 37 C.F.R. § 41.37, we decide the appeal based on claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Arguments

The Examiner determines that claim 1 is directed to a method of facilitating group sharing of a desired item listing containing desired items and purchasing of the desired items, which is not meaningfully different than the abstract idea drawn to “certain methods of organized human activity” as identified in *In re Ferguson*, 558 F.3d 1359 (Fed. Cir. 2009), and which is similar to the abstract ideas held patent-ineligible in *Fair Warning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089 (Fed. Cir. 2016) and *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). *See* Final

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Act. 2–4, 11; *see also* Ans. 3–5. The Examiner further finds that claim 1 is not significantly more than the abstract idea because the claim elements in addition to the abstract idea include using a generic computer/processor executing the above-referenced abstract idea. *See* Final Act. 4–6, 11; *see also* Ans. 5–10.

Appellant argues the Examiner failed to establish a *prima facie* case that claim 1 is directed to patent-eligible subject matter. *See* Appeal Br. 19. More specifically, Appellant argues the Examiner failed to sufficiently identify the alleged judicial exception recited in the claim. *See id.* at 19–20. Appellant further argues the Examiner also failed to sufficiently explain why the alleged abstract idea corresponds to a concept identified as an abstract idea by the courts in *Fair Warning* and *Electric Power Group*. *See id.* at 20–21.

Additionally, Appellant argues that the Examiner failed to provide evidence that the additional elements of claim 1, besides the alleged abstract idea, are well-understood, routine, and conventional, as required by the courts in *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018). *See* Appeal Br. 21; *see also* Reply Br. 5. More specifically, as argued by Appellant, “the Examiner’s selections of a few words scattered throughout claim 1 is clearly not [an] analysis of the claims as an *ordered combination*.” *See* Appeal Br. 21. Further, Appellant argues that the Examiner’s citation to Appellant’s Specification in support of its finding that the additional elements of claim 1 are well-understood, routine, and conventional ignores the improvements discussed in Appellant’s Specification. *See* Appeal Br. 21–22; *see also* Reply Br. 5–9.

Appellant additionally argues claim 1 is not directed to an abstract idea because the claim is directed to a network-based solution that addressed

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a network problem, similar to the claims at issue in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). *See* Appeal Br. 23. As further argued by Appellant, the specific way in which the steps recited in claim 1 are performed prevents broad preemption of the subject matter, similar to the claims at issue in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) and *Finjan, Inc. v. Blue Coat Systems, Inc.*, 879 F.3d 1299 (Fed. Cir. 2018). *See* Appeal Br. 23–24. Further, Appellant argues claim 1 is not similar to the claims at issue in either *FairWarning* or *Electric Power Group*. *See id.* at 24–26.

Appellant further argues that even assuming *arguendo* that claim 1 is directed to an abstract idea, the claim nevertheless recites significantly more than an abstract idea because the claim recites a technical improvement rooted in computer technology. *See* Appeal Br. 26; *see also* Reply Br. 2. More specifically, as argued by Appellant, claim 1 is not merely “an abstract-idea-based solution implemented with generic technical components in a conventional way,” similar to the claims at issue in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016). *See* Appeal Br. 26–27. Further, as argued by Appellant, claim 1 solves a technical problem of not being able to find listings for items on a website via a search request, as described in Appellant’s Specification. *See* Reply Br. 2–5 (citing Spec. ¶¶ 9, 16, 18).

Principles of Law

Section 101 of the Patent Act provides that “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof” is patent eligible. 35 U.S.C. § 101. But the Supreme Court has long recognized an implicit exception to this section: “Laws of nature, natural phenomena, and abstract ideas are not patentable.”

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Alice Corp. v. CLS Bank Int’l, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). To determine whether a claim falls within one of these excluded categories, the Court has set out a two-part framework. The framework requires us first to consider whether the claim is “directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “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.” *Alice*, 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78, 79 (2012)). That is, we examine claim 1 for an “inventive concept,” “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 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

In January 2019, the USPTO published revised guidance on the application of § 101. See 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”).² Under that guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing

² In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the Guidance. USPTO, October 2019 Update: Subject Matter Eligibility (“October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

human activities such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING PROCEDURE (MPEP) §§ 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)).

Only if a claim (1) recites a judicial exception, and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not well-understood, routine, and conventional in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Guidance, 84 Fed. Reg. at 56.

Abstract Idea

To determine whether a claim recites an abstract idea, we (1) identify the claim’s specific limitations that recite an abstract idea, and (2) determine whether the identified limitations fall within certain subject matter groupings, namely (a) mathematical concepts; (b) certain methods of organizing human activity; or (c) mental processes.

Independent claim 1 recites an abstract idea because the claim recites a method of organizing human activity, one of the abstract idea groupings listed in the Guidance. *See* Guidance, 84 Fed. Reg. at 52, 53 (listing “[c]ertain methods of organizing human [activities] such as commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations)” as one of the “enumerated groupings of abstract ideas”).

Claim 1 is directed to a method pertaining to “creation of a buyer’s group and a desired-item listing at an online market place,” “maintaining a purchase-commitment count according to a received purchase commitment,” and “seller bidding.” Spec. ¶ 5. The claimed method includes the following elements:

- (1) “receiving . . . a search request comprising a first item description, the first item description describing a first item using a plurality of terms”;
- (2) “determining that a group site described by the plurality of terms of the first item description does not exist”;
- (3) “in response to determining that the group site does not exist, generating the group site . . . the group site including a group characteristic corresponding to the plurality of terms”;
- (4) “generating a first item listing using the first item description”;
- (5) “receiving . . . a second item description comprising a plurality of search terms that do not exactly match the plurality of terms in the first item description”;
- (6) “in response to the receiving the second item description, posting to the group site a second item listing using the second item description, the second item description specifying a first transaction condition”;
- (7) “receiving . . . a commitment corresponding to the second item description”;
- (8) “posting to the group site, a third item listing using a third item description received from a third client device, the third item listing having a second transaction condition that is different than the first transaction condition;”;

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- (9) “receiving . . . a revocation of the commitment”;
- (10) “responsive to receiving the revocation, decrementing a commitment count to produce an updated commitment count for the second item listing”; and
- (11) “transmitting to the group site, an update to the second item listing including the updated commitment count corresponding to the second item listing”.

Appeal Br. 29–30.

Here, the claim elements recite a method of facilitating group sharing of a desired item listing containing desired items and purchasing of the desired items. Such recited subject matter is both a commercial interaction and an interaction between a buyer and a seller, where both types of interactions fit squarely within the human activity organization category of the Guidance. *See* Guidance, 84 Fed. Reg. at 52 (listing exemplary methods of organizing human activity including (1) commercial interactions, and (2) managing interactions between people including following rules or instructions).

Although claim 1 recites an abstract idea based on a certain method of organizing human activity, we nevertheless must still determine whether the abstract idea is integrated into a practical application, namely whether the claim applies, relies on, or uses the abstract idea in a manner that imposes a meaningful limit on the abstract idea, such that the claim is more than a drafting effort designed to monopolize the abstract idea. *See* Guidance, 84 Fed. Reg. at 54–55. We therefore (1) identify whether there are any additional recited elements beyond the abstract idea, and (2) evaluate those elements individually and collectively to determine whether they integrate the exception into a practical application. *See id.*

Here, as previously discussed, the only recited elements beyond the abstract idea are “at least one processor of a machine,” “a first client device” “a network site,” “a second client device,” and “a third device,” as recited in claim 1. Consistent with the Examiner’s findings, these additional elements do not integrate the abstract idea into a practical application when reading the claims as a whole because the additional elements are analogous to an instruction to implement the method of organizing human activity on a computer. *See* Final Act. 5; *see also* Ans. 10. Further, regarding the claimed “causing a display of the first item listing as a post in the created group site that is browsable by members of the group site and at least one user associated with a second client device,” the display of the first item listing as a post within the created group site is merely an insignificant extra-solution activity which does not render an abstract idea patent-eligible. *See* Guidance, 84 Fed. Reg. at 55 (identifying “[adding] insignificant extra-solution activity to the judicial exception” as an example of when an abstract idea has not been integrated into a practical application).

Regarding whether the Final Office Action fails to establish a *prima facie* case of patent-ineligibility, Appellant’s argument is not persuasive. Contrary to Appellant’s argument, the Examiner is merely required to provide Appellant reasonable notice as to the basis of the § 101 rejection, as set forth by 35 U.S.C. § 132:

[T]he PTO carries its procedural burden of establishing a *prima facie* case when its rejection satisfies 35 U.S.C. § 132, in “notify[ing] the applicant ... [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. That section “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and

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seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

In re Jung, 637 F.3d 1356, 1362 (Fed. Cir. 2011). The Examiner’s findings met this requirement, as the Examiner provided an analysis of the patent-eligibility of the claims, and the Examiner’s articulated rationale for the rejection clearly put Appellant on notice regarding the basis of the rejection and provided sufficient information for Appellant to judge the propriety of continuing the prosecution of the application. *See* Final Act. 2–11; *see also* Ans. 3–10.

Appellant’s argument that claim 1 is not directed to an abstract idea because claim 1 is similar to the claims at issue in *DDR Holdings* is also not persuasive. *See* Appeal Br. 23. In *DDR Holdings*, the court determined that the claims at issue were necessarily rooted in computer technology in order to address the Internet-centric problem of how to provide user access to computer-implemented applications over the Internet. *DDR Holdings*, 773 F.3d at 1257. In contrast, the functions recited in claim 1 previously described above (*e.g.*, receiving a first item description, determining that a group site described by the first item description does not exist, generating the group site, etc.), are not necessarily rooted in computer technology, as the aforementioned functions could also occur outside the context of computer technology (*e.g.*, if the aforementioned functions were implemented using pen and paper). Appellant’s citation to its Specification in its Reply Brief (Reply Br. 3–4 (citing Spec. ¶¶ 9, 16–18)) does not persuade us otherwise, as the cited portions of the Specification fail to describe functions that are necessarily rooted in computer technology.

Appellant’s argument that claim 1 does not broadly preempt any subject matter, and is therefore patent-eligible, is also not persuasive. The

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Federal Circuit has made clear that “the absence of complete preemption does not demonstrate patent eligibility” of a claim. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Further, Appellant’s argument that claim 1 is not similar to the claims at issue in *Fair Warning* or *Electric Power Group* is also not persuasive of Examiner error. As described above, the Examiner’s findings are consistent with the Guidance, which “extracts and synthesizes key concepts identified by the courts as abstract ideas.” *See* Guidance, 84 Fed. Reg. at 52.

Appellant’s argument that claim 1 recites a technical improvement rooted in computer technology is not persuasive either. Rather, we agree with the Examiner that the focus of claim 1 is not an improvement to a computer or other technology but instead is using the computer to implement the underlying method of organizing human activity. *See* Ans. 5–6. More specifically, we agree with the Examiner that the problem discussed in the Appellant’s Specification (*i.e.*, not being able to find desired listing for items) is not a technical problem but instead is a commercial problem, where a computer is used as a tool to implement a method of organizing human activity that addresses the commercial problem. *See* Ans. 10; *see also* Spec. ¶ 2–4 (describing that a problem of online ecommerce sites is that they are listed to sellers’ offerings of items that differ significantly from items buyers desire to purchase).

In support of the argument that claim 1 recites a technical improvement, Appellant attempts to analogize claim 1 to the claims at issue in *DDR Holdings* (Reply Br. 2–4), which has been previously addressed above. In further support of its argument that claim 1 recites a technical improvement, Appellant also attempts to analogize claim 1 to the claims at issue in *McRO*. This argument is not persuasive either. In *McRO*, the

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claims recited rules with specific characteristics allowed computers to product accurate and realistic lip synchronization and facial expressions in animated characters that previously could only be produced by human animations, and it was the specific claimed features of the rules that produced technical improvement. *See McRO*, 837 F.3d at 1313. In contrast, Appellant’s claim 1 does not recite any rules that enable the automation of specific tasks that previously could not be automated.

Thus, claim 1 does not integrate the judicial exception into a practical application. Claim 1: (1) does not improve the functioning of a computer or other technology, (2) is not applied with any particular machine (except for a generic computer), (3) does not effect a transformation of a particular article to a different state, and (4) is not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception. *See MPEP* §§ 2106.05(a)–(c), (e)–(h).

Inventive Concept

Because we determine claim 1 is “directed to” an abstract idea, we consider whether claim 1 recites an “inventive concept.” As previously discussed, the additional elements recited in claim 1 are “at least one processor of a machine,” “a first client device” “a network site,” “a second client device,” and “a third device.” As the Examiner correctly found, claim 1 recites these elements at a high level of generality, and Appellant’s Specification indicates that these elements are generic computer components, as shown below.

[0007] FIG. 1 is a diagrammatic representation of a network environment 100 including an online marketplace 105 to host

buyer-solicited offerings, according to example embodiments. The online marketplace 105 is communicatively coupled to a computer network, which may be for example the Internet 110. The online marketplace 105 may also be communicatively coupled to a database 115, which may be used to store descriptions and listings relating to the buyer-solicited offerings. ***The online marketplace 105 and the database 115 may correspond to at least a portion of a server, for example.*** A device 120 may be communicatively coupled to the Internet 110 and used by a buyer 130, a seller 140, or a further seller 150 to communicate through the Internet 110 to the online marketplace 105. One skilled in the art will readily appreciate that the buyer 130 may represent one or more buyers, and similarly the seller 140 and the further seller 150 may represent or refer to one or more sellers and further sellers respectively. ***The device 120 can correspond to many different types of devices that may be, for example, a cell phone, a smart phone, a personal data assistant (PDA), a tablet, a notebook computer, or a desktop computer to name but a few of possible personal electronic devices usable by the buyer 130, the seller 140, or the further seller 150 to establish communication with the online marketplace 105.***

...

[0008] FIG. 2 is a block diagram illustrating a buyer-solicited offerings system 200, as may be used in example embodiments. ***The buyer-solicited offerings system 200 may reside within the online marketplace 105 (FIG. 1) and may be implemented as a portion of a server, for example. The buyer-solicited offerings system 200 may include a processor (not shown) communicatively coupled through the computer network and a local bus 205 to the database 115.***

[0009] The buyer-solicited offerings system 200 can include ***a group module 210*** to determine the existence of a buyers' group within the buyer-solicited offerings system 200 and create a buyers' group within the buyer-solicited offering system 200 and create a buyers' group when the buyers' group is determined to not exist. . . .

[0010] When a description of a desired item or a description of an item for sale is received by the buyer-solicited offerings system

200, *a listing module 215* may produce a corresponding desired-item listing or an item listing for the desired item or the item for sale, respectively. . . .

[0011] *A confirmation module 220* may be used to manage confirmation of a purchase commitment received from the device 120 of the buyer 130 and maintain marketing metrics relating to confirmed purchase commitments. . . .

[0013] *An authentication module 225* may be included in the buyer-solicited offerings system 200 to authenticate a financing commitment and shipping details included in the purchase commitment presented by the buyer 130. . . .

[0014] *A funding module 230* may be communicatively coupled through the local bus 205 to the authentication module 225 to receive indications to secure funding and activate funding relative to a purchase commitment from the buyer 130.

. . .

[0064] Certain embodiments are described herein as including logic or a number of components, modules, or mechanisms. *Modules may constitute either software modules (e.g., code embodied (1) on a non-transitory machine-readable storage medium or (2) in a transmission signal) or hardware-implemented modules.* A hardware-implemented module is tangible unit capable of performing certain operations and may be configured or arranged in a certain manner. In example embodiments, *one or more computer systems (e.g., a standalone, client or server computer system) or one or more processors may be configured by software (e.g., an application or application portion) as a hardware-implemented module that operates to perform certain operations as described herein.*

Spec. ¶¶ 7–14, 64 (emphasis added); *see also* Ans. 9.

Using generic computer components to perform abstract ideas does not provide the necessary inventive concept. *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.”). Thus, these elements, taken individually or together with the other claim elements, do

not amount to “significantly more” than applying the abstract idea on a general purpose computer.

We are not persuaded by Appellant’s contention that the Examiner failed to present a *prima facie* case that claim 1 recites well-understood, routine, and conventional functions. As previously discussed, Appellant’s Specification provides evidence that the recited functions are well-understood, routine and conventional, as Appellant’s Specification discloses that any general-purpose computer is capable of performing the recited functions. *See e.g.*, Spec. ¶¶ 7–14, 64.

Further, Appellant’s argument that claim 1 is similar to the claims at issue in *Bascom* is also not persuasive. In *Bascom*, the claims solved an Internet-centric problem of filtering Internet content, and thus, the claimed computer components were necessary components of the claims. *See Bascom*, 827 F.3d at 1349–51. In contrast, the claimed “at least one processor of a machine,” “a first client device” “a network site,” “a second client device,” and “a third device,” of claim 1 are not necessary components to perform the method of facilitating group sharing of a desired item listing containing desired items and purchasing of the desired items recited in claim 1, as the recited steps for performing the method can be done outside the context of computer technology, such as with pen and paper. In addition, unlike the claims at issue in *Bascom*, claim 1 does not recite a technical improvement. Instead, as previously described, claim 1 recites an improvement to the underlying method of organizing human activity itself.

Conclusion

For at least the above reasons, we agree with the Examiner that claim 1 is “directed to” an abstract idea, and does not recite an “inventive

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concept.” Accordingly, we sustain the Examiner’s rejection of claim 1 and the remaining claims, which fail to include additional elements that add significantly more to the abstract idea, under 35 U.S.C. § 101.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-3, 5-6, 9-15, 17-23	101	Eligibility	1-3, 5-6, 9-15, 17-23	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED