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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EDWARD LEE and MARIANNE IANNACE

Appeal 2020-000868
Application 14/938,425
Technology Center 3600

Before ROBERT E. NAPPI, JAMES W. DEJMEK, and
SCOTT E. BAIN, *Administrative Patent Judges*.

BAIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's decision to reject claims 1–20, which constitute all claims pending in the application. 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) (2018). Appellant identifies the real party in interest as Mastercard International Incorporated. Appeal Br. 2.

BACKGROUND

The Claimed Invention

Appellant's claimed invention relates to "inferred matching from payment card accounts to mobile devices" in order to "to enhance data analytics." Spec. 1.

Claims 1, 8, and 15 are independent. Claim 1 is representative of the invention and the subject matter of the appeal, and reads as follows:

1. A computerized method comprising:

receiving a plurality of first *data* sets, each of said first data sets indicative of respective locations and respective times of a plurality of payment card transactions associated with a respective payment card account that corresponds to said each first data set;

receiving a plurality of second *data* sets, each second data set including a respective mobile device travel *profile*, each of said travel profiles corresponding to a respective mobile device and including a plurality of data pairs, each data pair having a geographic data element and a temporal data element, the geographic data element indicative of a geographic location, the temporal data element representative of a date and/or time;

matching one of the mobile device travel profiles with one of said first *data sets*;

obtaining residence location *data* for the owner of the respective mobile device that corresponds to said matched one of the mobile device travel profiles; and

associating the residence location *data* with the respective payment card account associated with the matched first data set.

Appeal Br. 16 (Claims Appendix) (emphases added).

References

The references relied upon by the Examiner are:

Name	Reference	Date
Routson et al. ("Routson")	US 2007/0192122 A1	Aug. 16, 2007
Howe et al. ("Howe")	US 2013/0290119 A1	Oct. 31, 2013
James Bovard	The Last Dinosaur: The U.S. Postal Service, Cato Institute Policy Analysis No. 47	Feb. 12, 1985

The Rejections on Appeal

Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 8–15.

Claims 1–3, 5–10, 12–17, 19, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Howe and Routson. Final Act. 16–25.

Claims 4, 11, and 18 stand rejected under U.S.C. § 103 as being unpatentable over Howe, Routson, and Bovard. Final Act. 25–26.

DISCUSSION

We have reviewed the Examiner’s rejections in light of Appellant’s arguments presented in this appeal. Arguments which Appellant could have made but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). On the record before us, Appellant has not persuaded us of error. To the extent consistent with our discussion below, we adopt as our own the findings and reasons set forth in the rejection from which the appeal is taken and in the Examiner’s Answer. We provide the following for highlighting and emphasis.

Rejection Under 35 U.S.C. § 101

The Examiner determined that claim 1 is directed to “matching . . . mobile device travel profiles with . . . data sets,” “obtaining residence location data,” and “associating” the location data with a payment account, all of which the Examiner determined is a mental process and, therefore, constitutes an abstract idea. Ans. 4–5; *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (describing two-step framework “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts”). Further, the Examiner found that claim 1 does not recite additional limitations beyond generic computing devices, and therefore does not amount to significantly more than the abstract idea. Final Act. 11–12. Accordingly, the Examiner concluded that the claims constitute ineligible subject matter.

Appellant argues that claim 1 is not an abstract idea because it “goes into much more detail than” merely “collecting, analyzing, and recognizing financial data.” Appeal Br. 9; Reply Br. 3. Appellant argues that the claim recites details that do “not monopolize the abstract idea” cited by the Examiner. Appeal Br. 9. Appellant further argues that the invention “is directed to improving computer technology.” Reply Br. 2.

Pursuant to the USPTO’s “Revised Subject Matter Eligibility Guidance,” which synthesizes case law and provides agency instruction on the application of § 101, we must look to whether a claim recites:

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

activity such as a fundamental economic practice, or mental processes) (“Step 2A, Prong One”); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (“Step 2A, Prong Two”).

See USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance 84 Fed. Reg. 50, 54–55 (Jan. 7, 2019) (“Guidance”).

Only if a claim recites a judicial exception and 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, conventional” in the field (*see* MPEP § 2106.05(d)); or

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

See id. 56 (collectively “Step 2B”).

We begin our review with Step 2A, Prong One of the Guidance, as applied to Appellant’s claim 1.²

As the Examiner determined, claim 1 is directed to a “computerized method.” Appeal Br. 16. The method is performed on various “data” by a combination of “receiving,” “obtaining,” “matching,” and “associating” steps. *Id.* Specifically, claim 1 recites receiving data indicative of

² The Guidance refers to “Step One” as determining whether the claimed subject matter falls within the four statutory categories identified by 35 U.S.C. § 101: process, machine, manufacture, or composition of matter. This step is not at issue in this case.

“locations” and “times” of “payment card transactions;” receiving data regarding a “mobile device travel profile” including geographic location and time; “matching” the travel profile to data; “obtaining” residence location data; and “associating” the residence location data with a card account.

Appeal Br. 16.

We agree with the Examiner’s determination that the foregoing steps all constitute the mental process of obtaining, analyzing, and organizing data according to rules, which is one of the categories of subject matter deemed abstract under the Guidance. As the Examiner observes, “other than reciting in the preamble ‘[a] computerized method,’ nothing in the claim . . . precludes the step from practically being performed in the mind.” Ans. 5.

The Examiner explains, and we agree:

but for the ‘computerized method’ preamble language, ‘obtaining’ in the context of this claim encompasses a user manually obtaining residence location data for the owner of the matched mobile device by telephone or phone book and ‘associating’ encompasses thinking about associating the residence data location with the matched payment card account. . . [T]he retrieval, matching, associating, transmission, and modification of the data is under [broadest reasonable interpretation] not limited by any particular data structure, may be formatted in any non-computer readable format, and may comprise any information sufficient to identify the relevant information, such as handwritten text or vocal commands.

Ans. 5. Accordingly, the claim falls within the “mental process” category of abstract ideas. *See supra*.

The data collection elements recited in claim 1 do not make the claim any less abstract. *See Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (“[W]e have treated collecting information,

including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.”).

Thus, upon review of claim 1, we agree with the Examiner’s determination that the foregoing steps individually, and in combination, recite one or more of the categories deemed abstract under the Guidance.

We next proceed to Step 2A, Prong 2 of the Guidance. Under this step, if the claim “as a whole” integrates the abstract idea into a “practical application,” it is patent eligible. Appellant argues that claim 1 is “directed to improving computer technology, namely to support enhanced location-based data analytics.” Reply Br. 2; *see also Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016) (patent-eligible claims “directed to a specific implementation of a solution to a problem in the software arts”); *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

Appellant, however, does not explain, and we do not discern, any improvement in technology from the claimed invention or any other integration of the invention into a practical application. The claims in *Enfish* were directed to a “specific improvement to the way computers operate,” i.e., an improved database configuration that permitted faster searching for data. *Enfish*, 822 F.3d at 1330–33, 1336. Appellant does not describe an advance in hardware or software that, for example, causes a computer to operate faster or more efficiently. The alleged improvement to “location-based data analytics” does not parallel the improvement in *Enfish* and does not impart patent eligibility under *Mayo/Alice* step one. *See Secured Mail Sols. LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 910 (Fed. Cir. 2017) (explaining that the claims in *Enfish* “focused on an improvement to computer functionality itself, not on economic or other tasks for which a

computer is used in its ordinary capacity”). Claim 1 uses a computer in its ordinary capacity. Accordingly, the Examiner properly determined that claim 1 fails to recite an improvement to either the functioning of the computer itself or another technology or technical field. Final Act. 12–13.

Appellant also does not direct us to any evidence that claim 1 recites any unconventional rules, transforms or reduces an element to a different state or thing, or otherwise integrates the idea into a practical application. Rather, claim 1 recites matching various payment and location data sets according to rules. Appeal Br. 16 (Claims Appendix). Reciting a result-oriented solution that lacks any details as to how the computer performed the modifications is the equivalent of the words “apply it.” *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341–42 (Fed. Cir. 2017) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1356 (Fed. Cir. 2016) (cautioning against claims “so result focused, so functional, as to effectively cover any solution to an identified problem”)); *see also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (mere data gathering does not make a claim patent-eligible). The receiving and obtaining elements in claim 1 do not add meaningfully to the recited mental steps. *See supra*.

Finally, under Step 2B of the Guidance, we must look to whether the claims include any “additional limitation that is not well-understood, routine [or] conventional.” The “question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018); *see also Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d. 1314, 1325 (Fed. Cir. 2016)

(holding that patent eligibility inquiry may contain underlying issues of fact).

Claim 1 recites “matching . . . mobile device travel profiles with . . . data sets,” “obtaining residence location data,” and “associating” the location data with a payment account, according to rules. *See supra*. According to the Specification, the steps of claim 1 are performed using general purpose, conventional computing devices and program instructions. Spec. 13–14. We agree with the Examiner’s finding that simply using standard, generic computer elements to implement the foregoing managing of resources is well understood, routine, and conventional, and is not a meaningful limitation that amounts to significantly more than an abstract idea. Final Act. 11–13. Further, although Appellant asserts that claim 1 includes unconventional elements, Appellant provides no evidence or persuasive argument to rebut any of the Examiner’s foregoing findings. *Id.* For example, Appellant does not address the Examiner’s finding that the Specification describes only generic, standard computing elements implementing the steps in claim 1.

Similarly, we are unpersuaded by Appellant’s argument that the claims “do not preempt the entire field of customizing web content.” Appeal Br. 9. Although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016) (quoting *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 701, 193 (2015) (“[T]hat the claims do not preempt all price optimization or may be

limited to price optimization in the e-commerce setting do not make them any less abstract.”). Where, as here, “a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework . . . preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

Accordingly, we agree with the Examiner’s determination that claim 1 merely uses computer elements in the implementation of an abstract idea, which does not equate to providing a technical solution to a technical problem (*see* Ans. 10–11).

For the foregoing reasons, we are not persuaded of error. We sustain the rejection of claim 1 as constituting patent-ineligible subject matter. Appellant does not argue the subject matter eligibility rejection of the remaining claims separately from claim 1. Accordingly, we also sustain the rejection of those claims.

Rejection Under 35 U.S.C. § 103

Appellant argues the Examiner erred in finding the prior art teaches or suggests “obtaining residence location data,” and “associating” that data with the payment card account, as recited in claim 1. Appeal Br. 12–13; Reply Br. 3–4. Specifically, Appellant contends Howe only teaches geolocation data at “transaction” locations. Reply Br. 3. We, however, are unpersuaded of error.

The Examiner relies on not just Howe, but the combination of Howe and Routson as teaching the disputed claim limitations. The Examiner finds, and we agree, that Routson teaches obtaining residence location data. For example, Routson Figure 4 illustrations, and paragraph 81 explains, “filter 314 extracts data from internal customer account data” including “purchase

activity” and the customer’s residential address, and associating the residence data with an account. Routson, Fig. 4, ¶¶ 81, 87. Howe, in turn, teaches receiving the “real time geolocation” of a mobile phone. Howe, Fig. 2, ¶¶ 11, 16, 44.

Appellant does not explain how the Examiner allegedly erred in finding the combination of references teaches the disputed claim limitations. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (holding “one cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references”). Moreover, the Examiner finds ample rationale for combining the references:

It would have been obvious to one of ordinary skill in the art to include in the payment card security method of Howe, the ability to associate residence location data with a payment card account and associated transactions as taught by Routson, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of the ordinary skill in the art would have recognized that the results of the combination were predictable. Further, a person or ordinary skill would be willing to make this substitution ‘to ensur[e] . . . customer accounts are correctly linked to appropriate customer information within a customer database . . [and] all unique customers are not erroneously identified.’ [citing Routson ¶ 3].

Final Act. 18–19; *see also KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007) (“[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

Appellant does not point to any evidence of record that the resulting arrangements of the cited references were “uniquely challenging or difficult

for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418–19). The Examiner’s findings are reasonable because the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle” since the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 420–21. We are persuaded the claimed subject matter exemplifies the principle, “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 550 U.S. at 416.

For the foregoing reasons, we are not persuaded the Examiner erred in rejecting claim 1. The remaining claims are not argued separately. We, therefore, also sustain the rejections of remaining claims 2–20.

SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–20	101	Eligibility	1–20	
1–3, 5–10, 12–17, 19, 20	103	Howe, Routson	1–3, 5–10, 12–17, 19, 20	
4, 11, 18	103	Howe, Routson, Bovard	4, 11, 18	
Overall Outcome			1–20	

DECISION

We affirm the Examiner’s decision rejecting claims 1–20.

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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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED