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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PRASHANT CHANDRA FULORIA and GOKUL RAJARAM

Appeal 2016-005633
Application 13/194,507¹
Technology Center 3600

Before JOHN A. EVANS, JOHN P. PINKERTON, and
JOHN D. HAMANN, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants file this appeal under 35 U.S.C. § 134(a) from the Examiner’s Final Rejection of claims 1–3, 5–11, 13–19, and 21–23. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE CLAIMED INVENTION

Appellants’ claimed invention “relates generally to social networking systems and other systems in which users can form connections with other users, and in particular, providing a mechanism for users to promote social

¹ According to Appellants, the real party in interest is Facebook, Inc. App. Br. 2.

networking objects to other users.” Spec. ¶ 1. Claim 1 is illustrative of the subject matter of the appeal and is reproduced below.

1. A method comprising, by one or more computing systems:

presenting content to a first user in a news feed associated with a social networking system;

for a selected item in the news feed associated with a second user, determining a degree of closeness between the first user and the second user;

based on determination of a high degree of closeness between the first user and the second user, providing an interface to the first user to allow the first user to sponsor the selected item associated with the second user;

receiving, from the first user of the social networking system via the interface, a request to sponsor the selected item from the content presented in the news feed for promotion to one or more other users of the social networking system;

determining affinity scores for a plurality of other users of the social networking system, each affinity score determining a degree of closeness between a selected one of the plurality of other users and the first user and the second user;

promoting the one or more social networking objects to a subset of the plurality of other users of the social networking system that are determined to have a high degree of closeness to at least one of the first user and the second user until the one or more social networking objects have been viewed a predetermined number of times by the subset of the plurality of other users on the social networking system; and

debiting an account of the first user based on the promoting of the one or more social networking objects.

REJECTIONS ON APPEAL

(1) The Examiner rejected claims 1–3, 5–11, 13–19, and 21–23 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

(2) The Examiner rejected claims 1–3, 5–11, 13–19, and 21–23 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nicholas et al. (US 2008/0126476 A1; published May 29, 2008) (hereinafter “Nicholas”) and Svendsen et al. (US 2012/0123830 A1; published May 17, 2012) (hereinafter “Svendsen”).

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ contentions that the Examiner erred. In reaching our decision, we consider all evidence presented and all arguments made by Appellants.

We disagree with Appellants’ arguments and we incorporate herein and adopt as our own the findings, conclusions, and reasons set forth by the Examiner in the (1) May 20, 2015 Final Office Action (“Final Act.” 2–26) and (2) March 10, 2016 Examiner’s Answer (“Ans.” 2–30). We highlight and address for emphasis, however, specific findings and arguments below relating to (1) statutory subject matter eligibility and (2) the art based rejection.

(1) Arguments relating to § 101 rejection

Appellants contend the Examiner improperly rejected claims 1–3, 5–11, 13–19, and 21–23 under 35 U.S.C. § 101. *See* App. Br. 12–14; Reply Br. 2–4. As to the specific arguments we address below, Appellants argue the rejected claims as a group. Thus, we decide the appeal of the § 101 rejection on the basis of representative claim 1, and refer to the rejected claims collectively herein as “the claims.” *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

According to Appellants, the claims do not concern an abstract idea, and even if they did, the claims would be patent eligible because the claims amount to significantly more than an abstract idea. *See* App. Br. 13–14; Reply Br. 2–3. We find Appellants’ arguments unpersuasive.

Section 101 of the Patent Act provides that “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. The Supreme Court has explained that this provision is subject to a long-standing, implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014). The Court has set forth a two-part inquiry to determine whether this exception applies. First, we must determine if the claim at issue is directed to one of those patent-ineligible concepts. *Alice*, 134 S. Ct. at 2355. Second, if the claim is directed to one of those patent-ineligible concepts, we must consider the elements of the 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*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78–79 (2012)).

(i) Abstract idea

We first consider whether the Examiner properly concluded the claims are directed to one or more abstract ideas. For example, the Examiner concluded that the claims on appeal “are directed to the abstract idea of sponsoring published content, which is a fundamental economic

practice and/or a method of organizing human activities.” Ans. 21; *see also* Final Act. 3–4. More specifically, the Examiner finds the claims are for a “concept relating to interpersonal and intrapersonal activities, such as managing transactions between people, social activities, advertising, and sales activities and/or a concept relating to commerce, such as agreements between people in the form of contracts and business relations and/or [is] an idea standing alone such as a mental process.” Ans. 21.

The Examiner finds that these concepts are similar to (i) *SmartGene*’s “comparing new and stored information and using rules to identify options,” (ii) *buySAFE*’s “creating a contractual relationship,” and (iii) *Ultramercial*’s “soliciting and publishing a sponsored message,” for which concepts the Federal Circuit found to be directed to abstract ideas. *See* Ans. 21 (citing *SmartGene Inc. v. Adv. Bio. Labs. SA*, 555 F. App’x 950, 954 (Fed. Cir. 2014); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1353–55 (Fed. Cir. 2014); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714–15 (Fed. Cir. 2014)).

Appellants argue the claims are not directed to an abstract idea, including not being directed to “a fundamental economic practice and/or a method of organizing human activities.” App. Br. 13. Rather, according to Appellants, claim 1 recites specific limitations and is not an abstract idea. App. Br. 13–14. Appellants also argue “the idea of ‘sponsoring published content’ is far from being a ‘fundamental practice’ or a ‘method of organizing human activities.’” App. Br. 14; *see also* Reply Br. 2–3.

Appellants have not persuaded us that the Examiner erred. The Federal Circuit has explained that the abstract-idea inquiry requires “looking at the ‘focus’ of the claims, their ‘character as a whole,’” to determine if the

claims are directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016).

We agree with the Examiner that the claims are directed to abstract ideas of (i) managing interpersonal and intrapersonal activities, such as managing transactions between people, social activities, advertising, and sales activities, and (ii) managing commercial relationships, such as agreements between people in the form of contracts and business relations. In this regard, the claims of the instant application are similar to the claims found to be abstract ideas in *SmartGene*, *buySAFE*, and *Ultramercial*, as cited by the Examiner (i.e., “comparing new and stored information and using rules to identify options,” “creating a contractual relationship,” and “soliciting and publishing a sponsored message,” respectively).

These cases are sufficiently analogous to establish that the instant claims are directed to an abstract idea. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (explaining that when determining whether claims are directed to an abstract idea, “both this court and the Supreme Court have found it sufficient to compare [the] claims at issue to those claims already found to be directed to an abstract idea in previous cases”).

(ii) Inventive concept

We next consider whether the Examiner correctly concluded the claims do not include 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*, 134 S. Ct. at 2355 (alteration in original) (quoting *Mayo, Inc.*, 566 U.S. at 72–73). The Examiner explains:

The claims as a whole, considering all claim elements both individually and in combination, do not amount to significantly more than an abstract idea. [Claim 1's] website limitations/social network limitations do not add significantly more because they are simply an attempt to limit the abstract idea to a particular technological environment. The published content sponsoring is simply being performed using a social networking system. The social networking system is performing the generic functions standard to social networks in order to implement the abstract idea (news feed content publication, determining social relationships, providing interface for publishing content, receiving requests to publish content, promoting content to users based on social network connections).

Ans. 24; *see also* Final Act. 4–6.

Appellants argue the claims “contain an inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application.” App. Br. 14. Appellants point to limitations in the claims to support this contention that the claims amount to significantly more. *Id.* Appellants also argue that the limitations “are not steps that are analogous to purely generic computer functions.” Reply Br. 4.

We agree with the Examiner that the claims do not amount to significantly more than the abstract idea. Appellants fail to refute sufficiently the Examiner’s finding, with which we agree, that the claims perform functions for a particular technological environment (i.e., social networking systems), rather than being an inventive concept. *See Ultramercial*, 772 F.3d at 716 (finding using known elements to perform “conventional steps, specified at a high level of generality,” which is insufficient to supply ‘an inventive concept’” (quoting *Alice*, 134 S. Ct. at 2357)). Furthermore, the claims do not specify a special purpose computer, but rather describe routine and conventional steps to be carried out by the

equivalent of a generic computer (i.e., “apply it with a computer”), and, thus, fail to provide an inventive concept. *See Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1332 (Fed. Cir. 2015) (quoting *Alice*, 134 S. Ct. at 2358) (finding an inventive concept “requires more than simply stating an abstract idea while adding the words ‘apply it’ or ‘apply it with a computer’”). The fact that a generic computer requires relevant programming (i.e., the recited claim steps) does not change the programmed generic computer into a special purpose computer. *See id.*

For the above reasons, we sustain the Examiner’s rejection of claims 1–3, 5–11, 13–19, and 21–23 under 35 U.S.C. § 101.

(2) *Arguments relating to § 103 rejection*

(i) *Nexus between relationship and providing an interface*

Appellants argue the combination of Nicholas and Svendsen fails to teach or suggest “for a selected item in the news feed associated with a second user, determining a degree of closeness between the first user and the second user” and “based on determination of a high degree of closeness between the first user and the second user, providing an interface to the first user to allow the first user to sponsor the selected item associated with the second user,” as recited in claim 1. App. Br. 17–18. More specifically, Appellants argue Nicholas only teaches “when determining the particular content to be delivered to a user, . . . relationship information[] may be used to determine what content to deliver.” App. Br. 17–18 (citing Nicholas ¶ 316). As to sponsorships, Appellants argue Nicholas teaches that they “may be provided for entire feeds, for aggregate feeds, for individual feed items or subsets of a feed, or for groups of feed formatted content.” App. Br. 18 (citing Nicholas ¶ 132). Importantly, however, Nicholas fails to teach

“providing an interface to allow a user to sponsor content based on a high degree of closeness between users,” according to Appellants. *Id.* Rather, Appellants argue Nicholas teaches that users can “access[] a sponsorship interface to browse and filter content for selection by the sponsor.” *Id.* (citing Nicholas ¶ 137). There is no “sort of nexus between the determined relationship and providing the sponsorship interface.” *Id.*; *see also* Reply Br. 6 (arguing Nicholas may teach a potential sponsor can use subscription information to select what to sponsor, but Nicholas does not “provide a specific example for the opposite scenario where the sponsorship is solicited using subscription information”).

The Examiner finds that the combination, and Nicholas in particular, teaches or suggests the disputed limitation. Ans. 25–26; Final Act. 7. The Examiner finds Nicholas teaches “determining a degree of closeness between users for the purpose of providing items” and “that the likelihood that an item is delivered to a user is affected by ‘the closeness of the relationship they maintain with the person.’” Ans. 25 (citing Nicholas ¶¶ 315–317, 320–321); *see also id.* (citing ¶ 320 (finding “that recommendations sent to [a] user may be ‘weighted based upon closeness of relationship’”)).

As to sponsorship, the Examiner finds Nicholas teaches or suggests “providing a sponsorship interface to a first user to allow the first user . . . to sponsor a selected item associated with a second user.” Ans. 25 (citing Nicholas ¶¶ 121, 131, 133–134, 137); *id.* (quoting Nicholas ¶ 133 (“[T]he request and/or reply may be provided via an online sponsorship interface.”)). More specifically, the Examiner finds Nicholas teaches “current subscription information associated with the feed formatted content may also be used to

select or *solicit* sponsorships of certain feed formatted content.” Ans. 25–26 (emphasis added) (quoting Nicholas ¶ 137). The Examiner further finds “[b]asing the sponsorship solicitation on the degree of closeness between users is a longstanding commercial practice seen previously in various forms of advertising,” and is reinforced by Nicholas’ teaching that “sponsorships can be offered to *local* businesses to sponsor talent shows, science fairs, school dances, sporting events and other school events” — “local” is a measure of closeness considered in the sponsorship solicitation. Ans. 26 (citing Nicholas ¶ 400).

We agree with the Examiner’s findings and adopt them as our own. For example, we agree Nicholas teaches or suggests using closeness between users to provide items (e.g., feed formatted content) to a user. *See* Nicholas ¶¶ 315–317, 320–321. We also agree Nicholas teaches or suggests providing a sponsorship interface to a user which allows the user to sponsor an item associated with another user. *See* Nicholas ¶¶ 121, 131 (“Individuals may contact each site individually to have their content published on those sites, or there could be an interface displaying the end site options and, for example, the amount each costs or the consideration required.”), 133 (“One or more clients provide a request for sponsorship of feed formatted content and provide a reply to sponsorship request.”), 134 (“The request for sponsorship is received . . . by a sponsor. A reply is provided by the sponsor in response to the request”), 137. Contrary to Appellants’ arguments, Nicholas at least suggests providing an interface to “solicit sponsorships of certain feed formatted content.” Nicholas ¶ 137.

It would have been obvious to one of ordinary skill in the art to combine Nicholas’ above cited teachings to teach or suggest the disputed

limitation. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“[T]he [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”); *In re Preda*, 401 F.2d 825, 826 (CCPA 1968) (“[I]t is proper to take into account not only specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.”). Furthermore, we find Appellants’ argument that the combination fails to teach the “specific example” of the specific solicitation unpersuasive. *KSR*, 550 U.S. at 417 (“If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.”)

(ii) *Debiting by a predetermined amount of credits*

Appellants argue the combination of Nicholas and Svendsen fails to teach or suggest “debiting the account of the first user by a predetermined amount of credits,” as recited in claims 5 and 13. App. Br. 19–20 (emphasis added). More specifically, Appellants argue Nicholas teaches that “[p]ayment or consideration” (e.g., a monthly fee or publishing requirements) may be required from a user to publish the user’s content, but does not teach debiting by a predetermined amount of credits. App. Br. 20 (alteration in original) (citing Nicholas ¶ 131); Reply Br. 7.

The Examiner finds, and we agree, the combination teaches or suggests the disputed limitation. *See* Ans. 27–28. For example, the Examiner finds, and we agree, Nicholas teaches or suggests debiting the account of a first user based on sponsoring an item. Ans. 27 (citing Nicholas ¶ 250). We also agree with the Examiner that Nicholas teaches or suggests

requiring “consideration [or] payment to publish content” and “display[ing the] amount of costs and consideration required for publishing . . . before selection and publishing [(i.e., a predetermined amount)].” Ans. 27 (citing Nicholas ¶ 131 (“[P]ayment or consideration may be required based on the selection input,” and “there could be an interface displaying the end site options and, for example, the amount each costs or the consideration required.”)). We also note that Appellants’ Specification describes “credits” broadly (e.g., as being “equivalent to real-world currency,” or as being “valueless electronic currency that may only be used on the social networking system”). See Spec. ¶ 38.

Accordingly, it would have been obvious to one of ordinary skill in the art to combine Nicholas’ above cited teachings to teach or suggest the disputed limitation. See *KSR*, 550 U.S. at 417–18.

(iii) *Weighing objects more heavily*

Appellants argue the combination of Nicholas and Svendsen fails to teach or suggest “weighing the one or more social networking objects more heavily in a content ranking algorithm,” as recited in claims 6 and 14. App. Br. 21–22. Appellants argue Nicholas “merely discloses that a user who views feed formatted content may rank the viewed content as good or bad,” rather than disclosing the disputed limitation. *Id.* (citing Nicholas ¶ 217). Appellants also argue that even if Nicholas teaches using rating information, *inter alia*, in providing feed formatted content, “there is no disclosure that the rating information is used to rate feed formatted content more highly in a content ranking algorithm.” *Id.* (citing Nicholas ¶ 316).

The Examiner finds, and we agree, that the combination teaches or suggests the disputed limitation. Ans. 28–30. More specifically, the

Examiner finds, and we agree, Nicholas teaches or suggests that a user can rank content and “the content is promoted based on the recorded ranking data.” Ans. 28–29 (citing Nicholas ¶¶ 304–307 (finding “Nicholas describes a ranking mechanism (equivalent to a ranking algorithm) which uses ranking data to raise content higher on a display list (equivalent to weighing more heavily)”)), 316–317, 320 (“Recommendations may be weighted based upon closeness of relationship, a user’s reaction to prior recommendations from the same source, as well as whether it was a direct recommendation to the user, a recommendation to friends, or a general recommendation.”)).

CONCLUSION

Based on our above findings, we sustain the Examiner’s § 101 rejection of claims 1–3, 5–11, 13–19, and 21–23. We also sustain the Examiner’s § 103 rejection of claims 1, 5, 6, 13, and 14, as well as claims 2, 3, 7–11, 15–19, and 21–23, as Appellants do not provide separate arguments for their patentability.

DECISION

We affirm the Examiner’s decision rejecting claims 1–3, 5–11, 13–19, and 21–23.

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