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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALVARO BOLIVAR and WENYAN HU

Appeal 2017-003747
Application 12/814,020
Technology Center 3600

Before MICHAEL J. STRAUSS, MICHAEL M. BARRY, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–16 and 18–20, which are all the pending claims (*see* Final Act. 1 *and* App. Br. 25–27 (Claims App’x)). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellants identify eBay, Inc. as the real party in interest. App. Br. 3.

Introduction

Appellants’ “disclosure generally relates to data processing techniques. More specifically, the present disclosure relates to methods and systems for managing how search results are ranked and presented to a user of a computer-based trading or e-commerce application.” Spec. ¶ 1. The disclosure addresses e-commerce issues such as “how to best present products and services (e.g., items) that are being offered for sale, so as to maximize the likelihood that a transaction (e.g., the sale of a product or service) will occur.” Spec. ¶ 3. Appellants discuss specific concerns for intermediary enterprises that connect buyers with sellers to present item listings “in a fair manner that strikes a balance between the needs and desires of the various sellers, the buyers or potential buyers, and the [intermediary] enterprise itself.” Spec. ¶ 4.

The claimed invention determines “dwell time” of a user’s view of information, and ranks listings based (at least in part) on the dwell time. Appellants explain dwell time as follows—

In the context of the present disclosure, the dwell time is the amount of time that elapses beginning when a potential buyer navigates to a view item page from a display of search results and ending when the potential buyer navigates away from the view item page. As such, the dwell time represents the amount of time the potential buyer interacts with or views the view item page.

Spec. ¶ 13 (also explaining “the dwell time used herein is a measure of the amount of time that the user remains on the view item page instead of an amount of time elapsed since the user last visited a ‘search results’ page”); *see also id.* at 14–16, 28–32 (discussing aspects of dwell times, including their determination).

Claim 18 is representative of the claims on appeal:

18. A method comprising:

identifying a plurality of listings stored in a listing database as search results;

determining, using a processor, a respective dwell time associated with each of the plurality of listings, the dwell time based on an elapsed amount of time one or more users view a page describing the listing, and the dwell time associated with a likelihood of a transaction occurring with respect to the listing; and

ranking the listings composing the identified plurality of listings based at least in part on the respective dwell time associated with each of the plurality of listings.

App. Br. 25 (Claims App'x).

Rejections & References

Claims 1–16 and 18–20 stand rejected 35 U.S.C. § 101 as directed to a judicial exception (i.e., an abstract idea) without reciting significantly more. *See* Final Act. 2–4.

ANALYSIS

The Supreme Court has set forth an analytical “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71–73 (2012)). In the first step of the analysis, we determine whether the claims at issue are “directed to” a judicial exception, such as an abstract idea. *Alice*, 134 S. Ct. at 2355. If we determine they are not, then the inquiry ends. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed.

Cir. 2016). If we determine they are, then we consider under step two whether the claims contain an “inventive concept” sufficient to “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quotations and citation omitted).

In considering whether a claim is directed to an abstract idea, we acknowledge, as did the Court in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. Noting that the two stages involve “overlapping scrutiny of the content of the claims,” the Federal Circuit has described “the first-stage inquiry” as “looking at the ‘focus’ of the claims, their ‘character as a whole,’” and “the second-stage inquiry (where reached)” as “looking more precisely at what the claim elements add—specifically, whether, in the Supreme Court’s terms, they identify an ‘inventive concept’ in the application of the ineligible matter to which (by assumption at stage two) the claim is directed.” *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Therefore, we look to whether the claims 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. *See Enfish*, 822 F.3d at 1336.

Step One: Whether the Claims Are Directed to a Patent-Ineligible Concept (Abstract Idea)

Appellants argue all claims together as a group, *see* App. Br. 11–24, and we select the independent method claim 18 as representative, *see* 37 C.F.R. § 41.37(c)(1)(iv). The Examiner determines the claims are directed to the abstract idea of “organizing search listings, a type of advertising,

ranked by the time that a user views the advertisement,” or, in other words to an abstract idea of “sales and marketing actions or behaviors.” Final Act. 2–3 (citing *Cyberfone*² and *Digitech*³). The Examiner determines that, beyond reciting an abstract idea, the claim limitations, considered individually and in combination, include only routine, generic computer functionality and “are not sufficient to amount to significantly more than the abstract idea.” Final Act. 3.

Appellants argue the Examiner fails to set forth a prima facie case of ineligible subject matter under § 101. App. Br. 12–14. We disagree. The USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011). Here, the Examiner notified Appellants that the claims are directed to an abstract idea, i.e., “a type of advertising, ranked by the time that a user views the advertisement,” which the Examiner explains is a type of abstract idea of “sales and marketing actions or behaviors.” Final Act. 2–3. The Examiner also notified Appellants the claims do not recite significantly more than the abstract idea because the additionally recited computer elements “do not add a meaningful limitation to the abstract idea because they are generic computer components which perform generic computer functions and they would be routine in any computer implementation.” Final Act. 3;

² *Cyberfone Systems, LLC v. CNN Interactive Group, Inc.*, 558 F. App’x 988 (Fed. Cir. 2014).

³ *Digitech Image Technologies, LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014).

see also Ans. 2–6. The Examiner, thus, notified Appellant of the reasons for the rejection “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. In doing so, the Examiner set forth a *prima facie* case of unpatentability.

Appellants further argue the claims are not directed to an ineligible abstract idea because they are directed to a technological improvement and are similar to claims held patent eligible in other cases, such as *DDR Holdings*. *See* App. Br. 16–19, 23 (citing, *inter alia*, *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)). We agree.

We determine claim 1 is directed not only to the “business idea” of organizing (ranking) search results, but claim 1 also is directed to the use of dwell time, which is an Internet-centric challenge. *See, e.g.*, Spec. 1–4, 12–16. Claim 1 is analogous to the claim at issue in *DDR Holdings* in that, in both cases, a key aspect of the claim focuses on “a challenge particular to the Internet.” *DDR Holdings*, 773 F.3d at 1257. Thus, just as in *DDR Holdings*, here Appellants’ claim 1 is not directed to an abstract idea because it does “not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet.” *Id.* Claim 1 is not directed to an abstract idea because it “is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *Id.*

Accordingly, we do not sustain the 35 U.S.C. § 101 rejection of claim 1 and, for the same reasons, of claims 2–16 and 18–20.

Appeal 2017-003747
Application 12/814,020

DECISION

We reverse the 35 U.S.C. § 101 rejection of claims 1–16 and 18–20.

REVERSED