



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/036,176	02/22/2008	David J. Canora	07DIS190PRUSUTL 820.065	1457
77755 7590 03/25/2015 DISNEY ENTERPRISES, INC. c/o Ference & Associates LLC 409 Broad Street Pittsburgh, PA 15143			EXAMINER BAHL, SANGEETA	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 03/25/2015	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID J. CANORA, DAVID B. GROSS,
ROBERT DAVID GROSSMAN, ERNEST L. MARTIN, and
SCOTT RENCH

Appeal 2012-007838
Application 12/036,176
Technology Center 3600

Before: JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and MICHAEL
W. KIM, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE¹

Appellants seek our review under 35 U.S.C. § 134 from the
Examiner's final rejection of claims 1–25. We affirm.

¹ The Appellants identify Disney Enterprises, Inc. as the real party in
interest. (App. Br. 1).

THE CLAIMED INVENTION

Appellants' claimed invention is directed generally to providing recommendations to a guest at a venue based on one or both of real-time data about the venue and real-time data about the guest. Spec. para. 1. Claims 1, 17, and 19 are illustrative of the claimed subject matter:

1. A method for providing real-time recommendations, the method comprising:

accessing an existing itinerary corresponding to a guest of a venue, the venue having a plurality of attractions and the existing itinerary created in response to one or more of preferences of the guest and to historical data about the venue;

receiving, by a computer, one or more of real-time data about the guest and real-time data about the venue;

creating, by the computer, a real-time recommendation in response to the existing itinerary, to itineraries and suggestions given to one or more other guests, to a current location of the guest, and to one or more of the real-time data about the guest and the real-time data about the venue, the realtime recommendation including one or more suggested future activities for the guest; and

communicating the one or more suggested future activities to the guest via a user device.

17. A device for creating a dynamic itinerary for a guest at a venue, the device comprising:

one or more processes executing within the device and operable to access a preexisting itinerary;

one or more processes executing within the device and operable to access real-time data about the guest;

one or more processes executing within the device and operable to access real-time data about the venue; and

one or more processes executing within the device and operable to modify the preexisting itinerary to create the dynamic itinerary using the real-time data about the guest and the real-time data about the venue and itineraries and suggestions given to one or more other guests.

19. A crowd management system comprising:
a central computer system for collecting real-time information about a plurality of guests at a venue and real-time operations data about the venue; and
processes operable to use the collected real-time information and the real-time operations data to generate real-time recommendations for future activities of two or more of the plurality of guests.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Waytena	US 5,978,770	Nov. 2, 1999
Rankin	US 2003/0013459 A1	Jan. 16, 2003
Brown	US 2003/0061303 A1	Mar. 27, 2003
Dietz	US 6,591,068 B1	July 8, 2003
Giraldin	US 2006/0105783 A1	May 18, 2006
Redmann	US 7,212, 983 B2	May 1, 2007
Baranowski	US 2007/0178912 A1	Aug. 2, 2007
Hale	US 7,787,965 B2	Aug. 31, 2010

REJECTIONS

The following rejections are before us for review.

The Examiner rejected claims 1–10 under 35 U.S.C. § 101 as reciting ineligible subject matter.

The Examiner rejected claims 1–5, 7, 8, 10–12, 14–22, 24, and 25 under 35 U.S.C. § 103(a) over Redmann, Baranowski, Brown, and Rankin.

The Examiner rejected claims 6 and 23 under 35 U.S.C. § 103(a) over Redmann, Baranowski, Brown, Rankin, Waytena, and Hale.

The Examiner rejected claim 9 under 35 U.S.C. § 103(a) over Redmann, Baranowski, Brown, Rankin, and Dietz.

The Examiner rejected claim 13 under 35 U.S.C. § 103(a) over Redmann, Baranowski, Brown, Rankin, and Giraldin.

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence.

1. The Specification describes that a recommendation is created when “historical data is combined with real-time data to generate one or more suggested future activities for the guest.” (Para. 28).
2. The Specification describes by example that “real-time recommendations include a list of one or more suggested future activities for the guest.” (Para. 14).
3. Baranowski discloses:

the controller (120) monitors the approximate location of all the portable devices (100) in the wide-area facility. Consequently, if a customer’s location is such that that customer cannot reasonably reach an attraction in time for a reservation at that attraction, the controller (120) can shift the customer’s reservation into the future and advise the customer of the change by transmission to the customer’s portable device (100). (Para. 90).
4. Brown discloses communicating to “direct the wireless device users to different activities based on the current location of the wireless device and any other parameters, such as user preferences, etc.” (Para. 86).
5. Redmann, in describing the elements of Figure 15, discloses considering queue time for recommendations. (Col. 27, ll. 18–20).
6. Baranowski discloses a recommendation based on an itinerary of another guest, in that:

To compensate for the shift, the controller (120) can also attempt to identify customers with later reservations for the attraction who are close enough to reach the attraction earlier. The controller (120) may then signal that second customer and ask whether that second customer would be willing to use the attraction earlier than his or her scheduled reservation.

(Para. 91).

7. Redmann discloses determining queue time by “access actual, current queue information as it becomes available and whenever an itinerary is revised.” (Col. 19, ll. 58–60).
8. Redmann discloses accounting for venue availability, in that the database records a “zero would indicate that an attraction of either type is not available today.” (Col. 19, ll. 28–29).
9. Baranowski discloses “[t]he web host (130) preferably solicits demographic and preference information from the customer (505) that is used, as described above, to target appropriate advertising to that customer. (Para.79).

ANALYSIS

Claims 1–10 under 35 U.S.C. § 101

The rejection is affirmed as to claim 1. Appellants do not provide a substantive argument as to the separate patentability of claims 2–10 that depend from claim 1, which is the sole independent claim among those claims. Therefore, we address only claim 1, and claims 2–10 fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2011).

The Appellants argue the claimed recommendation is created by a computer, and the method produces a useful, concrete, and tangible result in the form of a non-abstract real-time recommendation of future activities for

a guest. (App. Br. 5–6, Reply Br. 5–6). We are not persuaded by the Appellants’ argument.

The Supreme Court set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us?” [] To answer that question, consider 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. The Court described step two of this analysis as 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 Corp., Pty. Ltd. v. CLS Bank Intl*, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S.Ct. 1289 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. We find that in this case, the claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The preamble to claim 1 recites that it is a “method for providing real-time recommendations.” The four steps in claim 1 result in simply making and communicating that recommendation. The Specification at 1 recites that the invention relates to a recommendation based on one or both of real-time data about the venue and real-time data about the guest. The Appellants direct us to paragraph 28 of the Specification for support of the “creating”

limitation in claim 1 (App. Br. 2), which states “historical data is combined with real-time data to generate one or more suggested future activities for the guest.” (FF 1). The Specification does not explain a methodology for basing the recommendation on the recited data, other than merely combining data. Thus, all this evidence shows that claim 1 is directed to compiling and communicating data.

It follows from prior Supreme Court cases, and *Bilski* in particular, that the claims at issue here are directed to an abstract idea. Like the risk hedging in *Bilski*, the concept of compiling data to reach a conclusion is a fundamental practice long prevalent in human endeavor. Thus, compiling data to reach a conclusion, like hedging, is an “abstract idea” beyond the scope of §101. *See Alice Corp. Pty. Ltd.* at 2356.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of combining historical and real-time data. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See Alice Corp. Pty. Ltd.* at 2357. We conclude that the claims at issue are directed to a patent-ineligible concept.

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two.

the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a

computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our §101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional feature[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice Corp. Pty. Ltd., 134 S. Ct. at 2358 (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea [] on a generic computer.” *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2359. They do not.

Considered as an ordered combination, the limitations of Appellants’ method add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellants’ method claims simply recite the concept of retrieving, combining, and communicating data. Even were the steps implied as being performed on a computer, the method claims do not, for example, purport to improve the functioning of a computer itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of combining and communicating data. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2360.

Claims 1–3, 8, and 10 under 35 U.S.C. § 103(a)

The rejection is affirmed as to claim 1. Appellants do not provide a substantive argument as to the separate patentability of claims 2, 3, 8, and 10 that depend from claim 1, which is the sole independent claim among those claims. Therefore, we address only claim 1, and claims 2, 3, 8, and 10 fall with claim 1. *See*, 37 C.F.R. § 41.37(c)(1)(vii) (2011).

The Appellants argue “Baranowski, at most, discloses proactively modifying a reservation and does not teach or suggest ‘creating, on the computer, a real-time recommendation,’ as recited in claim 1.” (emphasis omitted) (App. Br. 7, Reply Br. 7).

We disagree with the Appellants. The Specification describes that “recommendations include a list of one or more suggested future activities.” (FF 2). We find that Baranowski creates and communicates a recommendation via a reservation, which is a suggestion for a future activity, because the reservation is not a required activity. (FF 3).

Claim 1 recites creating a recommendation based on four data items: (1) an existing itinerary, (2) itineraries and suggestions given to one or more other guests, (3) a current location of the guest, and (4) one or more of the real-time data about the guest and the real-time data about the venue. The fourth data item requires only data about the guest or the venue, but not both, because the claim recites “one or more of” either data value. The Examiner finds Baranowski discloses creating a recommendation based on data items (1) and (3), Rankin discloses considering data item (2), and Redmann and Brown disclose considering a user’s preferences, which corresponds with data item (4) because it is current data about the guest.

(Ans. 6–7). Thus, we find that the Examiner has made a *prima facie* case of obviousness as to a *realtime recommendation including one or more suggested future activities for the guest*.

The Appellants argue Baranowski fails to disclose basing a recommendation on itineraries and suggestions given to other guests (data item (2)), *supra*. (App. Br. 7, Reply Br. 7). We are not persuaded by the argument, because the Examiner finds this data item in Rankin. (Ans. 7).

The Appellants argue Brown fails to disclose real-time data about the guest or venue (data item (4)), *supra*. We are not persuaded by the Appellants' argument, because Brown discloses using a user's preferences (FF 4), and Redmann discloses using queue times (FF 5), thus meeting both possible types of data in data item (4).

The Appellants argue Rankin fails to disclose basing a recommendation on itineraries and suggestions given to other guests (data item (2)), *supra*. (App. Br. 7–8, Reply Br. 7–8). We are not persuaded by the argument, because Baranowski discloses that a suggestion is made to a second customer in response to changing the itinerary of a first customer, which meets the claim language of a recommendation in response to itineraries given to other guests. (FF 3, 6).

For the four data items discussed *supra*, the Examiner has made findings. (Answer 6-7). Against these findings, Appellants merely make general assertions that claim language is not disclosed by the references, for each of the data elements. (App. Br. 7–8, Reply Br. 7–8). Thus, Appellants only assert differences in the context of a 35 U.S.C. § 103(a) rejection. The mere existence of differences between the prior art and the claims does not establish nonobviousness. *Dann v. Johnston*, 425 U.S. 219, 230 (1976).

The issue is “whether the difference between the prior art and the subject matter in question ‘is a differen[ce] sufficient to render the claimed subject matter unobvious to one skilled in the applicable art.’” *Dann*, 425 U.S. at 228 (citation omitted).

We therefore find no error with the Examiner’s rejection of claim 1.

Claim 4

Dependent claim 4 depends directly from claim 1, and recites “wherein the real-time data about the venue includes a current wait time at one or more attractions at the venue.”

The Appellants argue that Redmann’s queue time is historical, and thus not “real-time.” (App. Br. 8–9, Reply Br. 8–9). We are not persuaded by this argument, because Redmann discloses queue time may be based on “actual, current queue information” (FF 7), where “current” information meets the claim language of being “real-time.”

Claim 5

Dependent claim 5 depends directly from claim 1, and recites “wherein the real-time data about the venue includes one or more of an attendance level and availability of the attractions.”

The Appellants argue that Redmann fails to disclose venue data including “an attendance level and availability of the attractions”. (App. Br. 9, Reply Br. 9). We are not persuaded by this argument. Claim 1 recites a recommendation is made in response to “one or more of the real-time data about the guest and . . . the venue.” Therefore, the claim language of claim 5 is met by data about the guest, without regard to data about the venue, such

that the limitation claim 5 is superfluous, even when given full effect. Because the claim is met by basing the recommendation on real-time data about the guest, which is disclosed by Brown (FF 4), the combination meets the “one or more” claim language of claim 1, from which claim 5 depends. Notwithstanding, we nevertheless find that Redmann discloses availability of the attraction data at its accounting feature. (FF. 8).

Claim 7

Claim 7 depends directly from claim 1 and recites “wherein the real-time data about the guest includes an estimated current energy level of the guest provided by the guest.”

The Appellants argue that Baranowski fails to disclose the recited information about the guest. (App. Br. 9–10, Reply Br. 9–10). We are not persuaded by this argument. Claim 1 recites a recommendation is made in response to “one or more of the real-time data about the guest and . . . the venue.” Therefore, the claim language of claim 7 is met by data about the venue, without regard to data about the guest, such that the limitation of claim 7 is superfluous, even when given full effect. Because the claim is met by basing the recommendation on real-time data about the venue, which is disclosed by Redmann (FF 5), the combination meets the “one or more” claim language of claim 1, from which claim 7 depends. Notwithstanding, we nevertheless find that Baranowski discloses an estimated current energy level of the guest provided by the guest using the demographic data obtained from the guest. (FF. 9).

Claims 6 and 9

The Appellants argue claims 6 and 9 only on the basis that the addition of Waytena and Hale, for claim 6, and Dietz, for claim 9, does not cure alleged deficiencies of the rejection of claim 1. (App. Br. 16, Reply Br. 16). Because we find no deficiencies in the rejection of claim 1, we affirm the rejections of claims 6 and 9 for the same reasons set forth above for claim 1.

Claims 11 and 12

Independent claim 11 recites a system with limitations substantially similar to the steps of claim 1. The Appellants present arguments for claim 11 that are substantially identical to those presented at claim 1. (App. Br. 10–11, Reply Br. 10–11). We affirm the rejection of claim 11 for the same reasons set forth above at claim 1. We also affirm the rejection of dependent claim 12 which is not separately argued.

Claim 13

The Appellants argue claim 13 only on the basis that the addition of Giraldin does not cure alleged deficiencies of the rejection of claim 11. (App. Br. 17, Reply Br. 17). Because we find no deficiencies in the rejection of claim 11, we affirm the rejection of claim 13 for the same reasons set forth above for claim 11.

Claims 14 and 15

Dependent claim 14 recites language substantially similar to that of claim 4. Dependent claim 15 recites language substantially similar to that of

claim 7. The Appellants' arguments as to these two claims are substantially identical to those of claims 4 and 7. (App. Br. 11–12, Reply Br. 11–12). Therefore, we affirm the rejection of dependent claims 14 and 15 for the same reasons set forth above at claims 4 and 7.

Claim 16

Independent claim 16 recites a medium with limitations substantially identical to those of claim 1. The Appellants' arguments as to claim 16 are substantially identical to those of claim 1. (App. Br. 12–13, Reply Br. 12–13). Therefore, we affirm the rejection of independent claim 11 for the same reasons set forth above at claim 1.

Claims 17 and 18

The Examiner rejects independent claim 17 on the basis of the rejection of claims 1 and 2, because claim 17 recites limitations substantially similar to those of claim 2. The Appellants' arguments as to claim 17 are substantially identical to those of claim 1. (App. Br. 13–14, Reply Br. 13–14). Therefore, we affirm the rejection of independent claim 11 for the same reasons set forth above at claim 1. We also affirm the rejection of dependent claim 18, which was not argued separately. (App. Br. 15).

Claims 19, 20, 24, and 25

The rejection is affirmed as to claim 19. Appellants do not provide a substantive argument as to the separate patentability of claims 20, 24, and 25 that depend from claim 19, which is the sole independent claim among those claims. Therefore, we address only claim 19, and claims 20, 24, and 25 fall with claim 19 *See*, 37 C.F.R. § 41.37(c)(1)(vii) (2011).

The Appellants argue “Rankin[] discloses using a user’s own previous data to enhance their next visit, and does not teach or suggest ‘processes operable to use the collected real-time information and the real-time operations data to generate real-time recommendations for future activities of two or more of the plurality of guests,’ as recited.” (App. Br. 15, Reply Br. 15). We are not persuaded by the argument, because Baranowski discloses generating recommendations for a plurality of guests. (FF 3, 6).

Claim 21

Dependent claim 21 recites “wherein the collected real-time operations data includes a current wait time at one or more of the attractions at the venue.” The Appellants argue that Redmann’s queue time is historical, and thus not “real-time.” (App. Br. 15–16, Reply Br. 15–16). We are not persuaded by this argument, because Redmann discloses queue time may be based on “actual, current queue information.” (FF 7).

Claim 22

Dependent claim 22 recites “wherein the collected real-time operations data includes one or more of an attendance level and availability of the attractions.” The Appellants argue “Redmann discloses an attraction's capacity and not its ‘attendance level’ or ‘availability.’” (App. Br. 16, Reply Br. 16). We are not persuaded by the argument, because Redmann discloses if a venue’s attraction is unavailable that day by recording a zero in a database field, thus meeting the claim language of real-time data about availability of attractions. (FF 8).

Claim 23

The Appellants argue claim 23 only on the basis that the addition of Waytena and Hale does not cure alleged deficiencies of the rejection of claim 19. (App. Br. 17, Reply Br. 17). Because we find no deficiencies in the rejection of claim 19, we affirm the rejection of claim 23 for the same reasons set forth above for claim 19.

CONCLUSIONS OF LAW

The Examiner did not err in rejecting claims 1–10 under 35 U.S.C. § 101.

The Examiner did not err in rejecting claims 1–25 under 35 U.S.C. § 103(a).

DECISION

For the above reasons, the Examiner's rejections of claims 1–25 are AFFIRMED.

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

mp