UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARIO VILLENA and JOSE VILLENA

Appeal 2015-000949
Application 13/294,044
Technology Center 3600


WORTH, Administrative Patent Judge.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s Final rejection of claims 57–59. We have jurisdiction under 35 U.S.C. §§ 134 and 6(b).

We AFFIRM.

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2 According to Appellants, the real parties in interest are Mario Villena and Jose Villena (Appeal Br. 3).
Introduction

Appellants’ application relates to “a computer-based system for creating and maintaining massive databases containing computationally complex and novel property information” (Spec. ¶ 1).

Claims 57, 58, and 59 are the independent claims on appeal. Claim 57, reproduced below, is illustrative of the subject matter on appeal:

57. A system for distributing real-estate related information, comprising:
   one or more computers configured to:
   receive user-provided information and determine a geographic region based on received user-provided information;
   produce a plurality of automated valuation method (AVM) values using residential property information, the residential properties being within the geographic region, the AVM values reflecting current market estimates for the residential properties;
   provide display information to a remote terminal over a publically accessible network based on the user-provided information, the display information enabling the remote terminal to generate a map-like display for the geographic region, the map-like display containing at least:
   respective icons for each of a plurality of residential properties within the geographic region, the icons being spatially distributed relative to one another based on geographic information also residing in one or more computer-readable mediums; and
   an AVM value for at least one of the plurality of residential properties within the map-like display, wherein each AVM value is pre-process such that an AVM value for the at least one residential property pre-exists before a user query of the respective property is performed,
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and wherein the one or more computers update each of the AVM values without requiring a user query.

(Appeal Br. 59, Claims App.)

Rejections on Appeal

The Examiner maintains, and Appellants appeal, the following rejections:

I. Claims 57–59 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter because the claim(s) as a whole, considering all claim elements both individually and in combination, do not amount to significantly more than an abstract idea.  

II. Claims 57–59 stand rejected under 35 U.S.C. § 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement.

III. Claims 57–59 stand rejected under 35 U.S.C. § 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.


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3 This rejection was set forth in the Answer pursuant for the procedures for a new ground of rejection in the Answer.

ANALYSIS

Rejection I (Patentable Subject Matter)

Claims 57–59

In analyzing whether claimed subject matter is patent eligible, the Court in Alice articulated the use of a two-step framework set forth in Mayo Collaborative Services v. Prometheus Laboratories, Inc., 132 S.Ct. 1289 (2012):

First, we 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, we 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 Examiner rejected claims 57–59 as being directed to the abstract idea of providing updated AVM (automated valuation method) values to customers, which the Examiner finds is a method of organizing human activities and a fundamental economic practice that has long been prevalent in our system of commerce such as in the real estate industry (Ans. 3). With respect to the individual recitations, the Examiner finds that the ability to receive user provided information is routine and conventional in the
computing arts; that producing a plurality of AVM values is simply the executing of a mathematical algorithm; that providing display information to a remote terminal is performed on a general computing device; and that claims do not result in any improvement to the functioning of the computer itself, and do not effect an improvement in another technology or technical field (Ans. 3–4). We agree with the Examiner’s findings and determinations. Appellants put forth several arguments which we address in turn.

First, Appellants argue that the claims are not sufficiently abstract to warrant exclusion because the claims do not fall into any of the categories of organizing human activities, fundamental economic practices, ideas in and of themselves, and mathematical relationships and formulas (Reply Br. 6). Appellants assert that the Examiner has not provided any evidence in support of the finding that the claims are directed to categories of human activities, fundamental economic practices, or mathematical relationship and that the Examiner has not asserted the claim recites an idea in and of itself (id. at 7–11). Whether the Examiner has provided evidence in support of the proposition that providing property values is a way of organizing human activity or a long-prevalent economic practice, it is evident from the claim language itself that the “automated” valuation is based on mathematical algorithms.

Further, putting aside the history and long-standing nature of property valuation, we agree with the Examiner that the idea of property valuation is fundamental to an economic system. See Versata Development Group, Inc. v. SAP America, Inc., 793 F.3d 1306, 1333–34 (Fed. Cir. 2015) (reviewing
cases and holding a computer-implemented method of determining a price to be abstract).

Therefore, the subject matter of property valuation is “abstract” or non-patentable for at least two independent reasons: (1) because it is based on mathematical algorithms and (2) because it is directed to a fundamental economic principle.

Appellants also argue that the claimed idea will not impede other economic activity (Reply Br. 12). Although pre-emption of other inventions may be the result of an abstract idea, a showing of pre-emption is not required for a determination that an idea is directed to non-patentable subject matter. Ariosa Diagnostics, Inc. v. Sequenom, Inc., 788 F.3d 1371, 1377 (Fed. Cir. 2015) (“Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the Mayo framework, as they are in this case, preemption concerns are fully addressed and made moot.”).

Accordingly, we agree with the Examiner that under step one of Alice, claim 57, is directed to an abstract idea, i.e., property valuation.

Finally, Appellants argue that the claims are not abstract and are patent eligible because the combination is unconventional and represents an improvement in technology by creating a faster process (Reply Br. 13–18). However, we agree with the Examiner that the claims may be performed on a general purpose computer, and that Appellants have not persuasively argued that the application of a mathematical algorithm to a general computer represents a technological improvement. Therefore, we agree with the Examiner that the additional recitations of claims 57–59, individually or as a whole, do not remove the claims from the realm of patent-ineligible
subject matter. Thus, we sustain the Examiner’s rejection under § 101 of claims 57–59.

Rejection II (Written Description)

Claims 57–59

The Examiner reasons that the limitation “update each of the AVM values without requiring a user query,” as recited in independent claim 57 is not supported by paragraph 65 of the Specification (Final Act. 3). Appellants argue that the Specification need not disclose a claim limitation in haec verba and that a negative limitation is adequately supported when the specification describes a reason to exclude the relevant limitation (Appeal Br. 16–22; see also Reply Br. 19 (citing Santarus v. Par Pharmaceutical, 694 F.3d 1344 (Fed. Cir. 2012)).

Written description support is sufficient if the specification conveys that an applicant was in possession of the invention at the time of filing. See LizardTech, Inc. v. Earth Res. Mapping, Inc., 424 F.3d 1336, 1345 (Fed. Cir. 2005). A patent applicant is not required to describe explicitly in the Specification every embodiment of the invention (id.).

We are persuaded by Appellants’ argument. Paragraph 65 of the Specification states that the system updates the valuation “often.” Although this paragraph does not say that this is done “without requiring a user query,” in our view a person reading the Specification would understand that the valuation is updated automatically or independently, i.e., without a user query. Further, when paragraph 65 of the Specification states that the valuation is updated “after every sale,” such a disclosure does not require a user query even if it involves user input. As such, we do not sustain the Examiner’s rejection under § 112, first paragraph, of independent claim 57.
For similar reasons, we do not sustain the Examiner’s rejection under § 112, first paragraph, of independent claims 58 and 59.

Rejection III (Indefiniteness)

Claims 57–59

The Examiner reasons that the limitation “update each of the AVM values without requiring a user query,” as recited in independent claim 57 is indefinite because it is a negative limitation that is unclear (Final Act. 3). Appellants argue that negative limitations are permissible (Appeal Br. 24–27 (citing MPEP § 2173.05(i)).

We are persuaded by Appellants’ arguments. Although negative limitations may be disfavored, i.e., when they are unsupported by the original Specification, they may be used when adequately supported by the Specification. Further, we conclude that it is reasonably clear that “without requiring a user query” is another way of saying that the database is updated by the computer automatically. As such, we do not sustain the Examiner’s rejection under § 112, second paragraph, of independent claim 57. For similar reasons, we do not sustain the Examiner’s rejection under § 112, second paragraph, of independent claims 58 and 59.

Rejection IV (Anticipation and/or Obviousness Over Sklarz)

Claims 58 and 59

We are persuaded by Appellants’ argument that Sklarz fails to disclose updating AVM values, as recited in independent claim 58, i.e.,
“update each of the AVM databases values without requiring a user query” (Appeal Br. 37, 49–51, 52). 4

The Examiner correctly finds that paragraph 51 of Sklarz discloses that databases are updated periodically (Final Act. 12). However, the Examiner has not shown that the information in the database which is updated periodically is an appraisal value (i.e., rather than previous sale price). Rather the information in the VYH database of paragraph 51 is VYH data type information, as set forth in paragraph 48, or, in the alternative, MLS (Multiple Listing Service) data. Indeed, the Examiner relies on paragraphs 3, 7, 15, 18, 223, 248, and 250 of Sklarz for appraisal based on sales data (Final Act. 7–10), but paragraphs 223 and 248 of Sklarz indicate that the comparative market analysis or appraisal is performed in response to a user query (see also Sklarz, Fig. 16).

The Examiner reasons in the alternative that the predicted sales price may be stored in a cache and therefore would not need to be recalculated in the event of a subsequent query (Final Act. 13; see also Ans. 27–30). However, in our view, such an event would still be in response to a user query.

Therefore, we do not sustain the Examiner’s rejection under § 102 of independent claim 58. For similar reasons, we do not sustain the Examiner’s rejection under § 102 of independent claim 59.

With respect to the Examiner’s rejection under § 103 of independent claims 58 and 59, the Examiner reasons that it would have been obvious to update the AVM values (e.g., in the cache) automatically in the same

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4 This argument is made in a section with a heading referring to claim 57, but it is clear from the context that this applies to independent claim 58 as well.
manner as the database is automatically updated in order to provide current prices to users (see Final Act. 13–14). In our view, this reasoning is conclusory (i.e., to update in order to provide current information), and, in any event, it is unclear that the cache information is created independent of a user query. Therefore, we do not sustain the Examiner’s rejection under § 103 of claims 58 and 59 for lack of a prima facie case.

Rejection V (Obviousness over Sklar and Florance)

Claim 57

Unlike independent claims 58 and 59, independent claim 57 contains an additional recitation relating to geographical mapping to represent the information, for which the Examiner relies on Florance in combination with Sklarz, i.e., “an AVM value for at least one of the plurality of residential properties within the map-like display, wherein each AVM value is pre-process such that an AVM value for the at least one residential property pre-exists before a user query of the respective property is performed.” In particular, the Examiner finds that it would have been obvious to combine the zip code information of Sklarz (¶¶ 48, 59–60, 162, and Fig. 12) with the icon map of Florance (¶¶ 347, 348, Fig. 58) in order to prevent information in a user-friendly format (Final Act. 17–18; Ans. 34–35).

Appellants argue that the heat maps of Sklarz do not display graphic information of an AVM value (Appeal Br. 52). Appellants are referring to the description of color-coded maps in paragraph 162 of Sklarz. We agree with Appellants inasmuch as these maps only reflect ranges of prices for which homes have sold; they do not show actual AVM values of prices currently for sale.
Nor does Florance remedy the deficiency in Sklarz. Florance’s map in Figure 58 shows a sale price, but paragraph 347 of Florance explains that the sale price is shown in response to the user dragging the mouse over a location icon. As such, Florance does not show an AVM value that pre-exists a user query.

The Examiner determines that the recitations relating to AVM values “pre-exist[ing]” or being “pre-process” are non-limiting because, according to the Examiner, it does not affect the structure of the AVM values (Final Act. 18). However, we disagree with the Examiner’s construction of these recitations as non-structural because we conclude the recitations are structural in a time-dependent fashion. In other words, the AVM values simply do not exist in Sklarz when the user turns on the application until the user enters a query. Because neither Sklarz nor Florance shows appraisal values prior to a user query, we do not sustain the Examiner’s rejection under § 103 of claim 57 for lack of a prima-facie case.

DECISION

The Examiner’s decision to reject claims 57–59 is 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