

REMARKS

The Applicants have carefully considered the Office Action dated February 21, 2019, and the references cited therein. By way of this response, claims 1, 26, and 31 have been amended. All pending claims are in condition for allowance and favorable reconsideration is respectfully requested.

Examiner Interview Summary

The Applicant's representative, Michael W. Zimmerman (Reg. No. 57,993), thanks Examiner Frunzi for the courtesies extended during the telephonic interview conducted on May 15, 2019. During the interview, Examiner Frunzi gave helpful suggestions for amendments to the claims that would help in overcoming the § 101 rejections. Examiner Frunzi also stated that Example 40 of the USPTO's Subject Matter Eligibility Examples would be helpful in advancing prosecution. The Applicant's representative has amended the claims in the instant response based on the examiner's suggestions.

35 U.S.C. § 101 Rejections

The Office Action rejected claims 1, 3-6, 8-10, 12-15, 17-28, 30, 31, 33, 35, 36, and 38-40 under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. *See* Office Action, p. 2. In particular, the Office Action alleges that the claims fall within "Certain Methods Of Organizing Human Activity" and do not integrate the alleged judicial exception into a practical application. *Id.* at 3. The Applicants traverse these rejections.

Claim 1

Claim 1 sets forth a method comprising, *inter alia*, sampling ambient audio collected by a mobile computing device to generate sampled audio, generating first signatures or collecting first human-inaudible codes from the sampled audio to identify first media having audio included in the ambient audio and exposed to a first panelist of the plurality of panelists, the media identified by comparing the generated first signatures or collected first human-inaudible codes to reference signatures or reference human-inaudible codes associated with reference media, and correlating, with the computing device, the first Internet action with exposure to the first media identified based on the first signatures or human-inaudible codes, the correlating of the first Internet action performed substantially instantaneously as the first Internet action occurs in response to the notification of the first Internet action. The method further includes generating second signatures or collecting second human-inaudible codes to identify second media exposed to the first panelist or to a second panelist of the plurality of panelists by comparing the generated second signatures or collected second human-inaudible codes to signatures or human-inaudible codes associated with reference media, the second panelist and the first panelist belonging to a same one of the groups, accessing, with the computing device, a notification of a second Internet action performed by the first panelist or the second panelist, and correlating, with the computing device, the second Internet action with exposure to the second media identified based on the second signatures or second human-inaudible codes, the correlating of the second Internet action performed substantially instantaneously as the second Internet action occurs in response

to the notification of the second Internet action. Independent claim 1 sets forth a practical application of the alleged judicial exception and, as such, satisfies Prong Two of Revised Step 2A of the test outlined in the 2019 Eligibility Guidance.

Prong 2 of Revised Step 2A

Claim 1 provides a practical application of any judicial exception in a manner that imposes a meaningful limit on any such judicial exception. As stated in Section II of the 2019 Eligibility Guidance, “a claim that integrates a judicial exception into a practical application will apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *See*, 2019 Eligibility Guidance, Federal Register, Vol. 84, No. 4, p. 54. The 2019 Eligibility Guidance further explains that the claims should be evaluated to determine whether there is integration into a practical application by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application, using one or more of the considerations laid out by the Supreme Court and Federal Circuit. *Id.* at 54-55.

Claim 1 is integrated into a practical application for reasons similar to those explained by the USPTO in analyzing claim 1 of Example 40 of the Subject Matter Eligibility Examples. Claim 1 of Example 40 sets forth:

A method for adaptive monitoring of traffic data through a network appliance connected between computing devices in a network, the method comprising:

collecting, by the network appliance, traffic data relating to the network traffic passing through the network appliance, the traffic data comprising at least one of network delay, packet loss, or jitter;

comparing, by the network appliance, at least one of the collected traffic data to a predefined threshold; and

collecting additional traffic data relating to the network traffic when the collected traffic data is greater than the predefined threshold, the additional traffic data comprising Netflow protocol data.

See Subject Matter Eligibility examples, p. 10. In the Subject Matter Eligibility Examples, the USPTO explains that claim 1 of Example 40 is directed to a judicial exception (a mental process). *Id.* at 11. However, the USPTO further explained that the judicial exception is integrated into a practical application, rendering the claim patent eligible. In analyzing claim 1 of Example 40, the USPTO noted that “[a]lthough each of the collecting steps analyzed individually may be viewed as mere pre- or post-solution activity, the claim as a whole is directed to a particular improvement in collecting traffic data.” *Id.* (emphasis added). The USPTO continues, stating that “the method limits collection of additional Netflow protocol data to when the initially collected data reflects an abnormal condition, which avoids excess traffic volume on the network and hindrance of network performance. This provides a specific improvement over prior systems, resulting in improved network monitoring.” *Id.* (emphasis added). The USPTO concludes that the claim as a whole integrates the mental process into a practical application and, thus, claim 1 of Example 40 is patent eligible. *Id.*

Similarly, claim 1 sets forth a method that includes pre- or post-solution activity, but as a whole is directed to a particular improvement in determining effectiveness scores for advertisements and transmitting advertisements having higher effectiveness scores to

users. Specifically, the method limits the identification of media to a particular technical process where signatures or human-inaudible codes associated with the media are compared to signatures or human-inaudible codes associated with reference media. Further, claim 1 recites correlating an Internet action with exposure to the media identified based on the signatures or human-inaudible codes, the correlating of the second Internet action performed substantially instantaneously as the second Internet action occurs. The specific improvement over prior methods – performing a correlation between internet actions and exposure to media instantaneously – is a product of the combination of technical steps that limit, apply, and rely on the alleged judicial exception. Specifically, the use of signatures or human-inaudible codes used to identify media and the instantaneous correlation of the media and detected Internet actions provides the specific improvement over prior methods, as described in at least paragraphs [0013]-[0015] of the instant specification. Thus, claim 1 as a whole integrates the alleged exception of “Organizing Human Activity” into a practical application of technology that provides a specific improvement. Accordingly, claim 1 is eligible because it is not directed to the alleged judicial exception and instead integrates that alleged exception into a practical application.

While claim 1 offers an unmistakable practical application of technology, it also provides no risk whatsoever of pre-empting the use of any judicial exception. Rather, it is unambiguously limited to a practical application of technology that provides a meaningful limit on any judicial exception that could be imagined as present, and can in no way be reasonably seen to be a mere drafting effort seeking to monopolize any judicial exception. As such, the claim is not directed to a judicial exception and is patent

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eligible at Prong Two of Revised Step 2A. Thus, claim 1 is directed to patent-eligible subject-matter. Likewise, independent claims 26 and 31, and all claims depending respectively therefrom, set forth patent eligible subject matter under the 2019 Eligibility Guidance. Therefore, withdrawal of the § 101 rejections of independent claims 1, 26, and 31, and all claims depending respectively therefrom, is requested.

Conclusion

Throughout the claims, instances of “actions” have been replaced with “action.” This change does not narrow the claim. The term “action” is used throughout these claims to mean “at least one action.”

In general, the Office makes various statements regarding the pending claims that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

All claims are in condition for allowance. If the Examiner is of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is invited to contact the undersigned at (312) 580-1020.

The Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 50-2455. Please refund any overpayment to Hanley, Flight & Zimmerman, LLC at the address below.

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