UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte EMILY HAMILTON

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Appeal 2015-002166[1]
Application 11/416,281[2]
Technology Center 3600

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Before HUBERT C. LORIN, JAMES A. WORTH, and
BRUCE T. WIEDER, *Administrative Patent Judges.*

WORTH, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's

non-final rejection of claims 53–83. We have jurisdiction under 35 U.S.C.

§§ 134 and 6(b).

We AFFIRM.

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[1] Our decision refers to the Appellant's Appeal Brief ("Appeal Br.," filed
May 27, 2014) and Reply Brief ("Reply Br.," filed Nov. 24, 2014), and the
Examiner's Final Office Action ("Final Act.," mailed Dec. 24, 2013) and
Answer ("Ans.," mailed Sept. 25, 2014).
[2] According to Appellant, the real party in interest is Perigen Inc. (Appeal
Br. 3).

Introduction

Appellant's disclosure relates "to the field of obstetrics, and more specifically to a method and apparatus for monitoring labor progression and for providing a user interface to display data conveying maternal and fetal information during labor." (Spec. 1, ll. 7–9).

Claims 53, 68, and 83 are the independent claims on appeal. Claim 53, reproduced below, is illustrative of the subject matter on appeal:

> 53. A non-transitory computer readable storage medium storing a program element suitable for execution by a CPU, said program element displaying labour related information, said program element when executing on said CPU being adapted for:
>
> a) receiving signals conveying labour progression information associated with an obstetrics patient;
>
> b) processing the signals at least in part to derive measurements over time of a plurality of features related to labour progression, a given feature in the plurality of features being associated with a corresponding safety limit;
>
> c) processing measurements of the given feature to determine if they exceed the corresponding safety limit;
>
> d) displaying on a display module a first viewing window conveying measurements over time of a first feature related to labour progression;
>
> e) displaying on the display module at least one control allowing a user to provide an input to select an additional viewing window from a set of possible additional viewing windows, the set of possible additional viewing windows including at least some windows associated with features related to labour progression, one viewing window in the set of possible additional viewing windows conveying:
>
> > (i) measurements associated with the given feature; and

(ii) the corresponding safety limit associated with the given feature;

f) receiving selection information conveying the additional viewing window selected by the user using the at least one control and using said selection information to cause the display module to display the selected additional viewing window concurrently with the first viewing window so that labour related information being displayed on the display module is customized at least in part based on the input provided by the user, wherein the selected additional viewing window:

i) conveys measurements over time of a second feature related to labour progression; and

ii) is displayed in a substantially time aligned manner with the first viewing window to allow the user to view measurements of the first feature and measurements of the second feature over concurrent time periods;

g) in response to measurements of the given feature exceeding the corresponding safety limit, displaying on the display module information to attract the attention of the user to the one viewing window in the set of possible viewing windows conveying measurements of the given feature.

(Appeal Br., Claims App.)

Rejections on Appeal

The Examiner maintains, and Appellant appeals, the following rejections:

I.   Claims 53–83 stand rejected under 35 U.S.C. § 101 as
        being directed to non-statutory subject matter.[3]

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[3] This rejection is set forth in the Answer pursuant to the procedures for a new ground of rejection in the Answer.

II. Claims 53, 54, 68, 69, and 83 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Garfield (US 2002/0193670 A1, pub. Dec. 19, 2002) and Brummel (US 2002/0083075 A1, pub. June 27, 2002).

III. Claims 55–58, 62–64, 70–73, and 77–79 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Garfield, Brummel, and Marossero (US 2005/0267376 A1, pub. Dec. 1, 2005).

IV. Claims 59–61, 65–67, 74–76, and 80–82 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Garfield, Brummel, Marossero, and Hamilton (US 2004/0254430 A1, pub. Dec. 16, 2004).

ANALYSIS

Rejection I (Unpatentable subject matter)

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.

See Alice Corp., Pty. Ltd. v CLS Bank Intl, 134 S.Ct. 2347, 2355 (2014). *See also* USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility, 79 Fed. Reg. 74,618, 74,621 (Dec. 16, 2014).

The Examiner determines that

> The claims are drawn to an abstract idea, that abstract idea being a basic concept of providing healthcare. The claims do not amount to significantly more than the abstract idea itself such as not being an improvement to the functioning of a computer itself. Also, the computer related claims require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry

(Ans. 2–3).

Appellant argues that the Examiner has not stated the idea to which the claims are directed with sufficient specificity and that the claims

> are directed to specific solutions for alleviating the problem of information overload during labour monitoring by processing labour progression signals and inputs provided through a displayed user control to limit the amount of information presented to a user in a very specific way based on processing results obtained.

(Reply Br. 4–5). We are unpersuaded by this argument. Even characterizing the idea of the invention as argued by Appellant, i.e., limiting the amount of information for display for monitoring labor, we conclude that the idea of selecting what information to display is something that can be performed with mental steps, and as such, is abstract. Appellant further argues that the programming is complex so as to transform a computer into a new machine, i.e.,

> Contrary to what is being alleged by the Examiner, the Appellant submits that the CPU (referred to in claims 53 to 67),

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computing apparatus (referred to in claim 67 to 82) and processing unit (referred to in claim 83) are programmed with specific instructions that, when executed, create what is in effect a new machine.

(Reply Br. 8). However, the Specification states that the fetal heart rate sensors and uterine sensors are "well known in the art" (Spec. 8), that the display of signals is according to "suitable known methods" (Spec. 31), and that "[t]hose skilled in the art should further appreciate that the program instructions may be written in a number of programming languages for use with many computer architectures or operating systems" (Spec. 33). As such, the Examiner's finding that the claimed invention uses conventional technology is supported by the Specification. Therefore, we agree with the Examiner that the display of selected information is an abstract idea under step one of *Alice*.

Under step two of *Alice*, we proceed to analyze the individual recitations, taken individually or together, to see whether they transform the claimed invention into patentable subject matter. However, we are not persuaded that the claim would be transformed by the additional limitations of "receiving signals," "processing the signals," "processing measurements," "displaying" and "receiving" additional information to be displayed at the same time, and "displaying" information when a safety limit is exceeded. Again, to the extent that information is selected or displayed at the same time as other information, this would be an automation of mental steps performed by a health care professional, which is part of the same abstract idea, using conventional technology, as indicated by the Specification.

We, therefore, sustain the Examiner's rejection under § 101 of claims 53–83.

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Rejections II–IV (Obviousness)

Independent claim 53 and its dependent claims

We are persuaded by Appellant's argument that the prior art relied on by the Examiner fails to disclose limitation (f) of independent claim 53, i.e., "wherein the selected additional viewing window: ii) is displayed in a substantially time aligned manner with the first viewing window to allow the user to view measurements of the first feature and measurements of the second feature over concurrent time periods." The Examiner finds that Garfield does not explicitly disclose this limitation and relies instead on paragraph 23 of Brummel (Final Act. 5; Ans. 19-20). Paragraph 23 of Brummel discloses that the user may switch between opened activities but does not disclose allowing the module "to display the selected additional viewing window concurrently with the first viewing window," as recited. In other words, even if Brummel's system keeps track of two sets of data concurrently, there is insufficient disclosure of the *display* of the data concurrently. To the extent that the claim recites display "in a substantially time aligned manner," the claim also recites "concurrent time periods," which requires more perfect overlap in the timeframe for display than merely "substantially time aligned."

The Examiner further relies on the disclosure in paragraph 23 of Brummel that the viewing is customizable (*see* Ans. 20), but even construing this limitation as a functional limitation, it is unclear at best whether the display module of Brummel possesses the capability of concurrent display. As such, we do not sustain the Examiner's rejection of independent claim 53 and of claim 54, which depends therefrom.

Claims 55–67 stands rejected under § 103 over Garfield, Brummel, and Marossero, alone or further in view of Hamilton. However, the Examiner does not rely on Marossero or Hamilton to remedy the deficiency in the rejection of claim 53 over Garfield and Brummel. Therefore, we do not sustain the Examiner's rejection of claims 55–67 under § 103 over Garfield, Brummel, and Marossero, alone or further in view of Hamilton.

Independent claims 68 and 83 and their dependent claims

Independent claims 68 and 83 contain similar language and requirements as independent claim 53. Therefore, we do not sustain the Examiner's rejection under § 103 of independent claims 68 and 83, and their dependent claims, for similar reasons as for independent claim 53.

DECISION

The Examiner's decision to reject claims 53–83 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