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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/229,263	09/09/2011	Gennaro Luce	208777.00002	9233
21324	7590	10/06/2017	EXAMINER	
HAHN LOESER & PARKS, LLP 200 Public Square, Suite 2800 Cleveland, OH 44114			PAULSON, SHEETAL R.	
			ART UNIT	PAPER NUMBER
			3626	
			NOTIFICATION DATE	DELIVERY MODE
			10/06/2017	ELECTRONIC

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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* GENNARO LUCE

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Appeal 2016-000529<sup>1</sup>  
Application 13/229,263<sup>2</sup>  
Technology Center 3600

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Before ANTON W. FETTING, NINA L. MEDLOCK, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1, 2, 4–17, and 47–50. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Our decision references Appellant’s Appeal Brief (“App. Br.,” filed March 30, 2015) and Reply Brief (“Reply Br.,” filed September 21, 2015), and the Examiner’s Answer (“Ans.,” mailed July 24, 2015) and Final Office Action (“Final Act.,” mailed December 11, 2014).

<sup>2</sup> Appellant identifies Sequentia, 151 Innovation Dr., Ste. 260, Elyria, Ohio as the real party in interest. App. Br. 3.

## CLAIMED INVENTION

Appellant's claimed invention "relate[s] to on-line systems and methods to facilitate extended care planning and management" (Spec. ¶ 1).

Claims 1, 47, and 48 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An internet-accessible system for facilitating extended care planning and management for patients, said system comprising:

at least one server computer;

an interactive website hosted on said at least one server computer, wherein said interactive website includes:

a shared section being accessible to customers, hospitals, and extended care providers, without the hospitals or extended care providers having to have privileged access granted by a customer,

a hospital section dedicated to hospitals and being accessible to hospitals registered to said system, and not being accessible to customers or extended care providers, and

an extended care provider (ECP) section dedicated to extended care providers and being accessible to extended care providers (ECPs) registered to said system, and not being accessible to customers or hospitals; and

at least one searchable database operatively connected to said at least one server computer and storing searchable listings of hospitals and extended care providers (ECPs).

## REJECTIONS

Claims 1, 2, 4–17, and 47–50 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1, 2, 4–8, and 10–17 are rejected under 35 U.S.C. § 102(b) as anticipated by Turner et al. (US 2002/0099568 A1, pub. July 25, 2002) (hereinafter “Turner”).

Claims 9 and 47–50 are rejected under 35 U.S.C. § 103(a) as unpatentable over Turner and Green Jr. et al. (US 7,716,072 B1, iss. May 11, 2010) (hereinafter “Green”).

## ANALYSIS

### *Non-Statutory Subject Matter*

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289, 1300 (2012), “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.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” *id.*, e.g., to an abstract idea. If the claims are not directed to a patent-ineligible concept, the inquiry ends. Otherwise, the inquiry proceeds to the

second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp.*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1297).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 132 S. Ct. at 1293. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games America, Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

Here, in rejecting claims 1, 2, 4–17, and 47–50 under 35 U.S.C. § 101, the Examiner finds that the claims 1, 2, 4–17, and 47–50 are directed to “a website access based on roles,” i.e., to an abstract idea; and that the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception “because the additional elements or combination of elements in the claims amount to no more than a recitation of a generic computer structure that serves to perform generic computer functions that serve to merely link the abstract idea to a particular technological environment” (Ans. 8).

Appellant asserts that the rejection under § 101 is three sentences long, cites no authority, and provides no reasoning supporting its conclusions that the claims are directed to an abstract idea and lack significantly more than a judicial exception (Reply Br. 3). Appellant

maintains that the Examiner has, thus, failed to establish “a *prima facie* case of rejection” and that the § 101 rejection should be reversed on that basis alone (*id.*). We disagree.

The Federal Circuit has repeatedly noted that “the *prima facie* case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The court has, thus, held that 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.” *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011). Thus, all that is required of the Office is that it set forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Id.*; *see also Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (Section 132 “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”).

Appellant does not contend that the Examiner’s new ground of rejection was not understood or that the Examiner’s rejection under § 101, otherwise, fails to satisfy the notice requirements of § 132. Indeed, Appellant’s understanding of the rejection is clearly manifested by Appellant’s response as set forth in the Reply Brief.

We also are not persuaded by Appellant’s argument that the claims are not directed to an abstract idea because “as with *DDR [Holdings, LLC v. Hotels.com, L.P.]*, 773 F.3d 1245 (Fed. Cir. 2014)], the claims . . . are

directed toward practices not relevant in the pre-Internet world” (Reply Br. 3). Appellant notes that the claims require a server that hosts the claimed “shared section,” “hospital section,” and “extended care provider (ECP) section,” and that at least one independent claim, e.g., claim 47, also requires “a pre-certification and eligibility (PCE) module that pre-certifies patient medical conditions and insurance eligibility with one or more extended care providers”; “determining the availability of services and facilities at one or more extended care providers via the internet”; and “scheduling services and reserving facilities at a selected extended care provider via the internet” (*id.* at 3–4). Appellant asserts that this is more than a simple Internet-equivalent of exchanging hard-copy medical records or inquiring about accepted insurance carriers and that “[u]se for the claimed sections does not even arise in the context of routine business practices” because “the different types of information, sensitivity levels, and parties interested only recently became understood, and have changed dramatically in recent years due to the rapidly evolving laws, regulations, and technology impacting healthcare” (*id.* at 4).

Although Appellant ostensibly argues otherwise, the court did not conclude in *DDR Holdings* that the claims were patent-eligible merely because the claims did not recite the performance of a business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the Federal Circuit held that the claims were directed to statutory subject matter because they claimed a solution “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks,” i.e., retaining website visitors who, if adhering to the routine, conventional functioning of

Internet hyperlink protocol, would be transported instantly away from a host's website after "clicking" on an advertisement and activating a hyperlink. *DDR Holdings*, 773 F.3d at 1257. The court determined that the claimed invention did not simply use computers to serve a conventional business purpose. *Id.* Rather, there was a change to the routine, conventional functioning of Internet hyperlink protocol. *Id.*

Appellant summarily asserts here that the claims improve multiple technical fields, i.e., healthcare; healthcare administration and management; and remote communications (Reply Br. 4). But that argument is not persuasive at least because Appellant does not explain how, or in what way, these technical fields are allegedly improved.

We also are not persuaded of Examiner error by Appellant's argument that the pending claims do not tie up any judicial exception, and would not "block all others from implementing 'website access based on roles' if granted" (*id.* at 5). There is no dispute that the Supreme Court has described "the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption." *Alice*, 134 S. Ct. at 2354. But characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. "The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability" and "[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 134 S. Ct. at 2354). "[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility." *Id.*



We are not persuaded for the foregoing reasons that the Examiner erred in rejecting claims 1, 2, 4–17, and 47–50 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection.

*Anticipation*

*Independent Claim 1 and Dependent Claims 2, 4–8, 12–14, and 17*

We are not persuaded by Appellant’s argument that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 102(b) because Turner does not disclose three different levels of access, i.e., a shared section, a hospital section, and an extended care provider (“ECP”) section, as called for in claim 1 (App. Br. 14–16).

Turner is directed to a system and method for facilitating the process of caring for an individual, e.g., an elder, and discloses that an “e-space” is created for the elder, which is a set of data files associated with the elder (Turner, Abstract). The e-space is stored in a central location and can be accessed via a computer network, e.g., the Internet (*id.*). The system allows the elder (or his/her agent) to maintain his or her privacy by controlling access to the e-space, i.e., by specifying varying levels of access privileges for each type of data file in the e-space (*id.*). Turner discloses a server 122, with reference to Figure 1, including a data storage device which stores database 124 containing elder e-spaces 126 (*id.* ¶ 32). As shown in Figure 1, server 122 is connected to a network 100, and in one embodiment, server 122 is connected to the World Wide Web such that a user accesses the elder’s e-space by entering a URL associated with server 122 (*id.* ¶¶ 33, 34). Turner discloses that, besides storing elder e-spaces, database 124 can also store other types of e-spaces; for example, a care provider can create its own e-space that contains information specific to, and owned by the care

provider, e.g., billing information, policies/procedures, employee benefit information, staff schedules; as with the elder e-space, the files in the care provider e-space are privileged and access privileges are granted by one or more administrators or officials at the care provider (*id.* ¶¶ 38, 87–88).

Database 124 also contains elder care news, articles, tools, information and other resources 130, which form the “public” portion of the website; anyone visiting the site can access the public portion of the website, and thereby access this information (*id.* ¶¶ 39, 103–119).

Appellant argues that Turner, at best, discloses only two spaces, i.e., spaces for elders and care providers, “negating any suggestion that there is an arguably comparable type of ‘space’ corresponding to each claimed section” (App. Br. 15). But Appellant does not adequately explain why, and we fail to see why, Turner, in teaching that database 124 can also store other types of e-spaces, i.e., other than elder e-spaces, which are owned by entities other than the elder, which entities control access to their respective e-spaces, somehow fails to disclose a “hospital section” and an “extended care provider” section, as called for in claim 1. We also fail to see why, and Appellant does not adequately explain why, the “public” portion of the Turner website does not constitute “a shared section being accessible to customers, hospitals, and extended care providers, without the hospitals or extended care providers having to have privileged access granted by a customer,” as recited in claim 1.

In view of the foregoing, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 102(b). We also sustain the Examiner’s rejection of dependent claims 2, 4–8, 12–14, and 17, which are not argued separately.

*Dependent Claims 10, 11, 15, and 16*

Appellant argues that the Examiner erred in rejecting claims 10, 11, 15, and 16 for the same reasons set forth with respect to claim 1, from which they depend, and further because Turner does not disclose real-time communication of medical records, as called for in claims 10 and 15, or secure, exclusive, real-time, two-way communication, as called for in claims 11 and 16 (App. Br. 16–17).

Claim 10 recites that the system of claim 1 further comprises “an electronic medical record module . . . that assembles and edits patient electronic medical record (EMR) information from hospital sources to facilitate secure, real-time transmission of the patient EMR information between a hospital computer and an ECP computer via the internet.” Claim 15 is substantially similar to claim 10 except that it recites that the electronic medical record module assembles and edits patient EMR information from ECP sources to “facilitate secure, real-time transmission of the patient EMR information between an ECP computer and a hospital computer via the internet.”

Claim 11 recites that the system of claim 1 further comprises a “two-way communications module in communication with said hospital section that securely provides exclusive, real-time two-way communication of electronic notifications and information between a hospital computer and an ECP computer via the internet.” And claim 16 similarly recites that the system of claim 1 further comprises a two-way communications module in communication with said ECP section that “securely provides exclusive, real-time two-way communication of electronic notifications and

information between an ECP computer and a hospital computer via the internet.”

In rejecting claims 10, 11, 15, and 16 under 35 U.S.C. § 102(b), the Examiner cites paragraph 60 and Figures 1, 7A, and 7B of Turner as disclosing the claimed features (Final Act. 4–5). However, we find nothing in the cited portion of Turner that discloses the real-time transmission of information between an ECP computer and a hospital computer via the internet, as called for in claims 10, 11, 15, and 16. Instead, Turner merely discloses in paragraph 60 that chat room capabilities are available to the elder, care provider, and/or support group members, and that members of the elder’s support group can post messages in the chat room and communicate with each other. Figure 1 is block diagram of the system architecture, and Figures 7A and 7B merely show exemplary default privilege settings for permitting e-space access.

In view of the foregoing, we do not sustain the Examiner’s rejection of claims 10, 11, 15, and 16 under 35 U.S.C. § 102(b).

#### *Obviousness*

##### *Dependent Claim 9*

Claim 9 depends from claim 1, and recites that the system of claim 1 further comprises:

a pre-certification and eligibility (PCE) module in communication with the hospital section that pre-certifies patient medical conditions and insurance eligibility with one or more ECPs, wherein said hospital section includes computer-executable instructions configured to facilitate:

determining the availability of services and facilities at one or more ECPs via the internet in real-time; and

scheduling services and reserving facilities at a selected ECP via the internet in real-time.

In rejecting claim 9 under 35 U.S.C. § 103(a), the Examiner acknowledges that Turner fails to disclose or suggest the features of claim 9, and cites Green to cure the deficiencies of Turner (Final Act. 6–7 (citing Green, col. 12, ll. 19–29)). However, we agree with Appellant that there is nothing in the cited portion of Green that discloses or suggests the limitations recited in claim 9 (App. Br. 17–18). Instead, the best that Green discloses is that a user of the Green system may input pre-certification information from an insurance company or from a patient at check-in for an office visit.

In view of the foregoing, we do not sustain the Examiner’s rejection of claim 9 under 35 U.S.C. § 103(a).

*Independent Claims 47 and 48 and Dependent Claims 49 and 50*

Independent claims 47 and 48 include language substantially similar to the language of claim 9, and stand rejected based on the same rationale applied with respect to claim 9 (Final Act. 6–7). Therefore, we do not sustain the rejection under 35 U.S.C. § 103(a) of independent claims 47 and 48, and claims 49 and 50, which depend from claim 48, for the same reasons set forth above with respect to claim 9.

DECISION

The Examiner's rejection of claims 1, 2, 4-17, and 47-50 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejection of claims 1, 2, 4-8, 12-14, and 17 under 35 U.S.C. § 102(b) is affirmed.

The Examiner's rejection of claims 10, 11, 15, and 16 under 35 U.S.C. § 102(b) is reversed.

The Examiner's rejection of claims 9 and 47-50 under 35 U.S.C. § 103(a) is reversed.

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