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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/708,725	12/07/2012	Jeffrey Lee McLaren	080415.0115	4570
5073	7590	09/05/2017	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 700 DALLAS, TX 75201-2980			PAULS, JOHN A	
			ART UNIT	PAPER NUMBER
			3626	
			NOTIFICATION DATE	DELIVERY MODE
			09/05/2017	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY LEE McLAREN and WILLIAM DYER RODES II

Appeal 2016-000738
Application 13/708,725¹
Technology Center 3600

Before HUBERT C. LORIN, NINA L. MEDLOCK, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 2, 5–13, 16–24, and 27–33.² We have jurisdiction under 35 U.S.C. § 6(b).

¹ According to Appellants, the real party in interest is Medaxion LLC. (Appeal Br. 3.)

² In several locations in the Final Action, the Examiner refers to claims “1, 2, 5–13, 16–23, and 26–33” as pending or rejected. (*See, e.g.*, Final Action 3, 4.) Because claims 1, 2, 5–13, 16–24, and 27–33 are pending (*see id.* at 1), we treat references in the Final Action to claims “1, 2, 5–13, 16–23, and 26–33” as typographical errors and that these references should recite claims “1, 2, 5–13, 16–24, and 27–33.” Appellants appear to have also recognized these as typographical errors. (*See* Appeal Br. 10.)

We AFFIRM.

CLAIMED SUBJECT MATTER

Appellants' claimed invention "relates generally to managing medical data, and more specifically to managing medical records and charts for one or more medical practices." (Spec. 1, ll. 8–10.)

Claims 1, 12, and 23 are the independent claims on appeal. Claim 12 is illustrative. It recites:

12. A method comprising:

presenting, on a display capable of receiving touch-responsive user input, a patient monitoring worksheet displaying medical information relating to the delivery of medical care to a patient, the patient monitoring worksheet having a maximum viewable time range selected from the range of thirty minutes to four hours and equally divided into a plurality of time intervals, and wherein the patient monitoring worksheet comprises a plurality of simultaneously viewable display sections comprising a drugs display section, a fluids display section, a vital signs display section, and a physiological data display section;

the drugs display section having a column listing a plurality of drugs and, for each of the drugs, a row capable of tracking of an amount of the drug administered for each of the time intervals, and wherein if a number of the drugs exceeds a drug list threshold, the drugs display section is vertically scrollable in response to touch-screen gesture control;

the fluids display section having a column listing of a plurality of fluids and, for each of the fluids, a row capable of tracking of an amount of the fluid administered or expelled for each of the time intervals, and wherein if a number of the fluids exceeds a fluid list threshold, the fluids display section is vertically scrollable in response to touch-screen gesture control;

the vital signs display section having a column indicating a scale and capable of tracking, for each of the equally

distributed subintervals of time, a heart rate and a blood pressure of the patient charted on the scale; and

the physiological data display section having a column listing a plurality of physiological data items and, for each of the physiological data items, a row capable of tracking a value for the physiological data item for each of the time intervals, and wherein if a number of the physiological data items exceeds a physiological data item list limit, the physiological data display section is vertically scrollable in response to touch-screen gesture control;

wherein each of the time intervals of each of the display sections is a subsection;

detecting a beginning of a new time interval;

determining selected ones of the subsections set for auto-population of values;

determining values for the selected auto-population subsections;

presenting, using the display, the determined values for the auto-population subsections;

determining, for each subsection, whether information tracked during that subsection is incomplete;

presenting, using the display, visual emphasis for the ones of the subsections with incomplete information;

in a first mode of operation, permitting edit popups only for the ones of the subsections with incomplete information;

in a second mode of operation, permitting edit popups for any of the subsections; and

toggling between the first mode of operation and the second mode of operation in response to user input.

REJECTIONS

Claims 1, 2, 5–13, 16–24, and 27–33 are provisionally rejected for nonstatutory obviousness-type double patenting as being unpatentable over claims 1–33 of copending Application No. 13/708,680.

Claims 1, 2, 5–13, 16–24, and 27–33 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

ANALYSIS

The Provisional Nonstatutory Obviousness-type Double Patenting Rejection

Claims 1, 2, 5–13, 16–24, and 27–33 are provisionally rejected for obviousness-type double patenting. (Final Action 2.) Appellants do not substantively address this rejection in the Appeal Brief. (*See* Appeal Br. 10.) Therefore, we summarily affirm the provisional obviousness-type double patenting rejection of claims 1, 2, 5–13, 16–24, and 27–33.

The § 101 rejection

In 2014, the Supreme Court decided *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014). *Alice* applies a two-part framework, earlier set out in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (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*, 134 S. Ct. at 2355.

Under the two-part framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* If the claims are determined to be directed to a patent-ineligible concept, then the second part of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 2357 (citing *Mayo*, 566 U.S. at 72–73, 79).

The Examiner determines that all of the pending claims are directed to the abstract idea of “displaying medical information in sections, determining sections to be auto-populated, determining and highlighting missing information and providing a pop-up toggle function; (i.e. using categories to organize, store and transmit data).” (Final Action 4, emphasis omitted.) The Examiner also determines that “the specificity of an abstract idea does not make it less abstract. Essentially the claims recite a sequence of abstract ideas, executed on conventional devices, the combination of which is still abstract.” (Answer 3.)

Appellants argue that “[e]ven assuming this articulation of the abstract idea is correct (which Appellants do not agree with), the Examiner fails to provide any reasoning as to why Appellants’ claims create any risk of tying up any building block of human ingenuity, much less disproportionately doing so.” (Appeal Br. 11.) In particular, Appellants argue that “Appellants’ ordered combination of elements—including various highly specific functions—does not rise to the level of preempting the basic tools of scientific and technological work that the Supreme Court is concerned with.” (*Id.*)

Under part one of the *Alice* framework, we “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DirectTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)). Thus, although we consider the claim as a whole, the “directed to” inquiry focuses on the claim’s “character as a whole.”

In this case, the Specification discloses that the claimed invention relates to “a mobile electronic chart.” (Spec. 3, l. 2.) Claim 12 recites “presenting, on a display . . . a patient monitoring worksheet;” “the drugs display section having a column;” “the fluids display section having a column;” “the vital signs display section having a column;” “the physiological data display section having a column;” “determining . . . subsections set for auto-population of values;” “determining values for the selected auto-population;” “determining, for each subsection, whether information . . . is incomplete;” “presenting, using the display, visual emphasis for the ones of the subsections with incomplete information;” and “permitting edit popups.” In short, the claims are directed to collecting/organizing, storing, and displaying data.

In *Electric Power Grp., LLC v. Alstom S.A.*, “[t]he focus of the asserted claims . . . is on collecting information, analyzing it, and displaying certain results of the collection and analysis.” *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). “[W]e have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.” *Id.*

In view of the above, we are not persuaded that the Examiner erred in determining that the pending claims are directed to an abstract idea. The additional steps of a first mode permitting editing of some data and a second mode permitting editing of additional data does not change our determination that the claims’ character as a whole is directed to an abstract idea, i.e., collecting/organizing, storing, and displaying data. *See id.*

With regard to Appellants' preemption argument, we note that preemption is not a separate test.

To be clear, the proper focus is not preemption *per se*, for some measure of preemption is intrinsic in the statutory right granted with every patent to exclude competitors, for a limited time, from practicing the claimed invention. *See* 35 U.S.C. § 154. Rather, the animating concern is that claims should not be coextensive with a natural law, natural phenomenon, or abstract idea; a patent-eligible claim must include one or more substantive limitations that, in the words of the Supreme Court, add “significantly more” to the basic principle, with the result that the claim covers significantly *less*. *See Mayo* 132 S. Ct. at 1294 [566 U.S. at 72–73].

CLS Bank Int'l v. Alice Corp. Pty. Ltd., 717 F.3d 1269, 1281 (Fed. Cir. 2013), *aff'd*, 134 S. Ct. 2347 (2014). Moreover, “[w]here 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.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). In other words, “preemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Part two of the *Alice* framework has been described “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*, 134 S. Ct. at 2355 (citing *Mayo*, 132 S. Ct. at 1294).

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

[T]he 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 featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Id. 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.” *Id.* at 2359. They do not. Claim 12 relates to collecting/organizing and presenting data on “a display capable of receiving touch-responsive user input.” Claim 1 relates to an apparatus for collecting/organizing, storing, and presenting data having a similar display, and having a memory and a processor. Appellants argue that

[a]s in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (Fed. Cir. Dec. 5, 2014), “the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks” and associated systems. Here, the claims solve the problem of displaying specific patient monitoring data in a particular manner such that it can be viewed and manipulated on a handheld apparatus that may have limited screen space.

(Appeal Br. 14; *see also* Reply Br. 6.)

We disagree. The claims in *DDR Holdings* “specify how interactions with the Internet are manipulated to yield a desired result — *a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.*” *DDR Holdings*, 773 F.3d at 1258 (emphasis added). In other words, the invention claimed in *DDR Holdings* does more than “simply instruct the practitioner to implement the abstract idea with routine, conventional activity.” *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014); *see also DDR Holdings*, 773 F.3d at 1259. In this case, the claims implement the abstract idea of using categories to collect/organize, store, and display data, with routine, conventional activity.

Taking the claim elements separately, the function performed by the display in claim 12 and by the display, memory and processor in claim 1 is, at each step of the process, purely conventional. Using a processor to display information, determine sections to be auto-populated, highlight missing information, and provide for editing are basic functions of a computer and display system. All of these functions are well-understood, routine, conventional activities previously known to the industry. (*See Answer 9–10.*) In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellants’ method add nothing that is not already present when the steps are considered separately. The claims do not, for example, purport to improve the functioning of the 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 using categories to collect/organize, store, and display data using some unspecified, generic computer. That is not enough to transform an abstract idea into a patent-eligible invention. *See id.* at 2360. For the above reasons, we are not persuaded that the Examiner erred in rejecting independent claims 1 and 12 under § 101. Appellants do not separately argue independent claim 23 or dependent claims 2, 5–11, 13, 16–22, 24, and 27–33. Claims 2, 5–11, 13, 16–24, and 27–33 fall with claims 1 and 12. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

The Examiner’s provisional rejection of claims 1, 2, 5–13, 16–24, and 27–33 for nonstatutory obviousness-type double patenting is affirmed.

The Examiner’s rejection of claims 1, 2, 5–13, 16–24, and 27–33 under 35 U.S.C. § 101 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