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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* GEOFFREY HOWARD NUDD

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Appeal 2016-001509  
Application 13/444,737<sup>1</sup>  
Technology Center 3600

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Before HUNG H. BUI, ADAM PYONIN, and NABEEL U. KHAN,  
*Administrative Patent Judges.*

BUI, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner’s Final Office Action rejecting claims 1–35, all of which are pending on appeal. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.<sup>2</sup>

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<sup>1</sup> According to Appellant, the real party in interest is ClearCare Inc. App. Br. 1.

<sup>2</sup> Our Decision refers to Appellant’s Appeal Brief filed June 29, 2015 (“App. Br.”); Reply Brief filed November 23, 2015 (“Reply Br.”); Examiner’s Answer mailed September 21, 2015 (“Ans.”); Final Office Action mailed January 28, 2015 (“Final Act.”); and original Specification filed April 11, 2012 (“Spec.”).

STATEMENT OF THE CASE

Appellant's invention relates to a scheduling system for scheduling daily work shifts of home care providers (i.e., employees). Spec. ¶ 28.

Claims 1 and 25 are independent. Claim 1 is illustrative of the claimed subject matter, as reproduced below with disputed limitations in italics:

1. A method for managing employees comprising:

storing, by a server computer, at least one shift having a first date in the future, a start time, end time, and a provider who is to work the shift associated therewith;

*associating, by the server computer, a plurality of tasks with the at least one shift, the plurality of tasks to be performed on behalf of a recipient in accordance with needs of the recipient;*

receiving, by the server computer, *an instruction to replicate the at least one shift to create one or more replicated shifts each having a future date associated therewith;*

in response to receipt of the instruction to replicate, *storing by the server computer, the one or more replicated shifts each having a replication shift date associated therewith;* and

*automatically, in response to receipt of the instruction, relating, by the server computer, the plurality of tasks to each of the one or more replicated shifts such that for each shift of the one or more replicated shifts, tasks of an instance of the plurality of tasks related to the each shift each have an independently updatable status;*

wherein associating the plurality of tasks with each of the one or more replicated shifts occurs prior to the replication shift dates of the one or more replicated shifts; and

wherein recurrence of the plurality of tasks is specified exclusively by means of the relating the plurality of tasks to each of the one or more replicated shifts.

App. Br. 14 (Claims App'x.).

*Examiner's Rejections and References*

(1) Claims 1–35 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Final Act. 5–6.

(2) Claims 1–4, 8–18, 25–28, and 32–35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schweitzer et al. (US 2004/0078257 A1; published April 22, 2004), Iknoian (US 2009/0182611 A1; published July 16, 2009), and Forth (US 2007/0282660 A1; published Dec. 6, 2007). Final Act. 6–27.

(3) Claims 5–7 and 29–31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schweitzer, Iknoian, Forth, and Rosse (US 6,640,212 B1; Oct. 28, 2003). Final Act. 27–30.

(4) Claims 19–24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schweitzer, Iknoian, Forth, and Clockspot ([www.clockspot.com/phoneTimeClock.php](http://www.clockspot.com/phoneTimeClock.php); Internet Archive WaybackMachine; printed June 24, 2013). Final Act. 30–40.

ANALYSIS

*35 U.S.C. § 101: Claims 1–35*

In *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), the Supreme Court reiterates an analytical two-step framework previously set forth in *Mayo Collaborative Servs. v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289, 1297 (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. The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* If the

claims are directed to eligible subject matter, the inquiry ends. *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1349 (Fed. Cir. 2017); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “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.” *Id.* (quoting *Mayo*, 132 S. Ct. at 1298–97). In other words, the second step is to “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.’” *Id.* (citing *Mayo*, 132 S. Ct. at 1294).

In rejecting independent claims 1–35 under 35 U.S.C. § 101, the Examiner finds these claims are directed to an abstract idea of “managing employees,” *i.e.*, “storing and processing the shift and task data” which is a method of organizing human activities recognized by the Supreme Court as a patent-ineligible “abstract idea” in *Alice*, 134 S. Ct. at 2356. Final Act. 5–6; Ans. 2–3. The Examiner also finds

[t]he additional element(s) or combination of elements in the claim(s) other than the abstract idea per se amount(s) to no more than: (i) mere instructions to implement the idea on a computer, and/or (ii) recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry. The claim requires no more than a general purpose computer to perform generic computer functions (spec, [00031]) that are well-understood in the art of employee management. After considering all claim elements, both individually and in combination, it has been determined that the claim does not amount to significantly more than the abstract

idea itself or more than a mere instruction to apply the abstract idea. Viewed as a whole, these additional claim element(s) do not provide meaningful limitation(s) to transform the abstract idea into a patent eligible application of the abstract idea such that the claim(s) amounts to significantly more than the abstract idea itself.

App. Br. at 5.

Appellant presents several arguments against the § 101 rejection, including: (1) “these claims are specific computerized actions,” i.e., “[t]hey are not human activities” and, as such, are “neither human activities nor simply ‘managing employees’”; (2) “claims 1–35 recite performing a number of steps that do more than link the abstract idea to a particular technological environment”; and (3) there is no evidence to support the Examiner’s finding that “the claims recite nothing more than well-understood or routine elements or nothing more than a known technological environment.” App. Br. 6–8. In the Reply, Appellant further argues that the Examiner’s alleged “taking of Official Notice that the elements of claims 1 and 25 are conventional, well-understood, and routine is inappropriate.” Reply Br. 2.

We do not find Appellant’s arguments persuasive because (1) the Supreme Court’s *Alice* two-step framework is applicable to all statutory categories under § 101; and (2) Appellant may not circumvent the prohibition on the patenting of abstract ideas simply by drafting claims to include generic computer hardware. *Alice*, 134 S. Ct. at 2359 (explaining that allowing claims to a computer system configured to implement an abstract idea “would make the determination of patent eligibility ‘depend simply on the draftsman’s art,’ thereby eviscerating the rule that ‘[l]aws of nature, natural phenomena, and abstract ideas are not patentable’”) (citations

omitted). As recognized by the Supreme Court, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *See id.* at 2358–59 (concluding claims “simply instruct[ing] the practitioner to implement the abstract idea of intermediated settlement on a generic computer” not patent eligible). Moreover, we note that patent eligibility determination under 35 U.S.C. § 101 is a question of law, and not a question of fact. The USPTO is required to meet its procedural burden under 35 U.S.C. § 132 to notify the Applicant of the reasons for its rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (alteration in original, quoting 35 U.S.C. § 132). Here, the Examiner notified Appellant that the claims are directed to an ineligible abstract idea, specifically, to the abstract idea of “managing employees,” where the claims “do[] not amount to [something] significantly more than the abstract idea itself.” Final Act. 5–6. Thus, Appellant has been notified of the reasons for the rejection with such information “as may be useful in judging of the propriety of continuing the prosecution of [the] application,” which is all that is required.

Contrary to Appellant’s arguments, we agree with the Examiner that Appellant’s (1) claims 1–35 are directed to an abstract idea of “managing employee” under *Alice* step 1; and (2) these claims do not contain an “inventive concept” under *Alice* step 2. Final Act. 4–6; Ans. 3–6. According to the Federal Circuit, an “inventive concept” sufficient to “transform” the claimed “abstract idea” into a patent-eligible application

under the second step of the *Alice* inquiry can be established in several ways, including:

(1) in *DDR*, an “inventive concept” is found because *DDR*’s claims (i) do not merely recite “the performance of some business practice known from the pre-Internet world” previously disclosed in *Bilski* and *Alice*, and instead (ii) provide a technical solution to a technical problem unique to the Internet, i.e., a “solution [] necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks,” *DDR*, 773 F.3d at 1257;

(2) in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), an “inventive concept” is found because *Bascom*’s claims, when considered as “an order combination,” “transform the abstract idea of filtering content into a particular, practical application of that idea,” i.e., “installation of a filtering tool at a specific location, remote from end-users, with customizable filtering features specific to each end user,” *Bascom*, 827 F.3d at 1350; and

(3) in *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.* 841 F.3d 1288 (Fed. Cir. 2016), an “inventive concept” is found because, like *DDR* and *Bascom*, *Amdocs*’ claims “entail[] an unconventional [] solution (enhancing data in a distributed fashion) to a technological problem (massive record flows which previously required massive databases)” and “improve the performance of the system itself,” *Amdocs*, 841 F.3d at 1300, 1302.

However, in contrast to the claims in *DDR*, *Bascom*, and *Amdocs*, Appellant’s independent claims 1 and 25 are directed to a method of “managing employees” including a series of data collection and organization steps of (i) “storing . . . at least one shift having a first date in the future, a start time, end time”; (ii) “associating . . . a plurality of tasks with the at least one shift”; (iii) “receiving . . . an instruction to replicate the at least one shift to create one or more replicated shifts”; (iv) “in response to receipt of the



instruction to replicate, storing . . . one or more replicated shifts each having a replication shift date”; and (v) “automatically . . . relating . . . the plurality of tasks to each of the one or more replicated shifts.” None of the steps recited in claims 1 and 25 provides: (1) a “solution . . . necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks,” *DDR Holdings*, 773 F.3d at 1257; (2) “a specific improvement to the way computers operate,” *Enfish*, 822 F.3d at 1336; or (3) an “unconventional technology solution . . . to a technological problem” that “improve[s] the performance of the system itself,” *Amdocs*, 841 F.3d at 1302.

Because Appellant’s claims 1–35 are directed to a patent-ineligible abstract concept under *Alice* step 1, and do not recite something “significantly more” under *Alice* step 2, we sustain the Examiner’s rejection of these claims under 35 U.S.C. § 101.

*35 U.S.C. § 103(a): Claims 1–4, 8–18, 25–28, and 32–35*

In support of the obviousness rejection, the Examiner finds the combination of Schweitzer, Iknoian, and Forth teaches all limitations of claims 1 and 25. Final Act. 6–11. For example, the Examiner finds Schweitzer teaches a method of managing employees, including:

- (1) “storing, by a server computer, at least one shift having a first date in the future, a start time, end time, and a provider who is to work the shift associated therewith” in the context of a scheduling manager (SM) 240, shown in Schweitzer’s Figure 2, used to create a shift, schedule information, itinerary, and recurring schedule (*see* Schweitzer ¶¶ 83–84, 98, 122–143, 218, 242, 245, 255–256); and
- (2) “associating . . . a plurality of tasks with the at least one shift,”

“wherein associating the plurality of tasks with each of the one or more replicated shifts occurs prior to the replication shift dates of the one or more replicated shifts;” and “wherein recurrence of the plurality of tasks is specified exclusively by means of the relating the plurality of tasks to each of the one or more replicated shifts” in the context of a scheduling manager (SM) 240, shown in Schweitzer’s Figure 2, used to generate individual assignments and recurring shifts to given employees (*see* Schweitzer ¶¶ 78–81, 239–245, 255–258, 537–538).

Final Act. 6–8.

To support the conclusion of obviousness, the Examiner relies on (1) Iknoian for teaching a similar “method for scheduling employee shifts, including the ability to copy/replicate shifts,” i.e., “to replicate refined schedules to a future date including the associated tasks”; and (2) Forth for teaching the use of “independently updateable statuses.” Final Act. 9–10 (citing Iknoian ¶¶ 33, 36–37, 42, Fig. 3; and Forth ¶¶ 23, 69, Fig. 8); Ans. 6.

Appellant acknowledges Schweitzer’s scheduling manager “SM 240 generates individual assignments, recurring shifts, and variable labor to be given to personnel,” but contends that Schweitzer’s assignment to the recurrent shifts is done manually, and is “completely independent of the creation of the shifts,” i.e., “is not a result of making the shift recurrent. App. Br. 9–10; Reply Br. 3–4 (emphasis added). As such, Appellant argues Schweitzer does not teach the disputed limitations:

“automatically . . . relating, by the server computer, the plurality of tasks to each of the one or more replicated shifts such that for each shift of the one or more replicated shifts, tasks of an instance of the plurality of tasks related to the each shift each have an independently updatable status . . .

wherein recurrence of the plurality of tasks is specified exclusively by means of the relating the plurality of tasks to each of the one or more replicated shifts”

as recited in claim 1. App. Br. 9. According to Appellant, Schweitzer does not teach that “recurrence of . . . tasks ‘is specified exclusively by means of the relating the plurality of tasks to each of the one or more replicated shifts.’” Reply Br. 3.

Appellant also contends “Iknoian is silent as to associating tasks with shifts” and, as such:

“replicating a shift as taught by Iknoian incorporated with the system of Schweitzer would not of itself result in assignments previously associated with the shift being made recurring or otherwise associated with copies of the shift. Making the status of tasks updatable as taught by Forth would likewise not remedy this deficiency.”

App. Br. 10.

We do not find Appellant’s arguments persuasive and commensurate with the scope of claims 1 and 25. Instead, we find the Examiner has provided a comprehensive response to Appellant’s arguments supported by a preponderance of evidence. Ans. 4–7. As such, we adopt the Examiner’s findings and explanations provided therein. *Id.* For example, Schweitzer teaches: (1) “associating tasks to a shift prior to replication dates and task recurrence is specified by the task and shift association”; and (2) “automated scheduling” to create shifts and assignments (tasks). Ans. 5–6 (citing Schweitzer ¶¶ 78–81, 239–245, 255–258, 537–538); *see also* Schweitzer’s Figures 7 (creating recurring shifts); Figures 18–19 (defining tasks including recurring tasks w/ recurring shifts); and Figure 27 (creating employee shift itinerary). Likewise, Iknoian also teaches “the ability to replicate defined

schedules to a future date including the associated tasks.” Ans. 5 (citing Iknoian ¶¶ 19–20, 33, 36, 42).

For the reasons set forth above, Appellant has not persuaded us of Examiner error. Accordingly, we sustain the Examiner’s anticipation rejection of independent claims 1 and 25 and their respective dependent claims 2–24 and 26–35, which Appellant does not argue separately. App. Br. 12.

#### CONCLUSION

On the record before us, we conclude Appellant has not demonstrated the Examiner erred in rejecting claims 1–35 under 35 U.S.C. § 101 and § 103(a).

#### DECISION

As such, we AFFIRM the Examiner’s final rejection of claims 1–35.

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