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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GEOFFREY CLAPP and SUDHIR DURVASULA¹

Appeal 2016–002579
Application 12/948,217
Technology Center 3600

Before ANTON W. FETTING, BRADLEY B. BAYAT, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*

DECISION ON APPEAL

STATEMENT OF THE CASE²

Geoffrey Clapp and Sudhir Durvasula (Appellants) seek review under 35 U.S.C. § 134 of a final rejection of claims 1, 2, 4–7, 9, and 10, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

¹ According to Appellants, the real party in interest is Health Hero Network, Inc. *See* App. Br. 2.

² Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed May 22, 2015) and Reply Brief ("Reply Br.," filed January 4, 2016), and the First Examiner's Answer ("Ans.," mailed November 3, 2015) and Second Examiner's Answer ("Second Ans.," mailed January 6, 2016), and Final Action ("Final Act.," mailed December 19, 2014).

The Appellants invented systems that are used to monitor the vital signs of patients in their homes to assist healthcare or clinical professionals (e.g., doctors, nurses, and the like) in managing the care of patients remotely. Specification para. 1.

An understanding of the invention can be derived from a reading of exemplary claim 10, which is reproduced below (bracketed matter and some paragraphing added).

10. A method of monitoring a patient, the method comprising:

[1] obtaining, over a network, physiological measurements from a patient;

[2] generating a graphical user interface displaying statistical information

based on a first subset of the physiological measurements associated with a first time period

and

a movable patient history slider,

the patient history slider positioned along a graphical time line to represent the first time period;

[3] receiving input from a user representing movement of the patient history slider to represent a second time period;

and

[4] updating the graphical user interface to display statistical information

based on a second subset of the physiological measurements associated with the second time period.

Claims 1, 2, 4–7, 9, and 10 stand rejected under 35 U.S.C. § 101 as directed to non–statutory subject matter.³

ISSUE

The issue of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice on the use of a slider.

ANALYSIS

Claims 1, 2, 4–7, 9, and 10 rejected under 35 U.S.C. § 101 as directed to non–statutory subject matter

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, [] 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, [] 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. [The Court] described step two of this analysis 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.”

³ The Examiner withdraws a rejection under 35 U.S.C. § 103(a) of claims 1, 2, 4–7, 9, and 10 in the 2nd Examiner Answer mailed January 6, 2016.

Alice Corp., Pty. Ltd. v CLS Bank Int'l, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Examiner finds the claims directed to displaying the results of mathematical analysis of patient data. Final Act. 2.

While the Court in *Alice* made a direct finding as to what the claims were directed to, we find that this case's claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The preamble to claim 10 recites that it is a method of monitoring a patient. The steps in claim 10 result in displaying statistical information based on physiological measurements. The Specification at paragraph 1 recites that the invention relates to monitoring patient vital signs. Thus, all this evidence shows that claim 10 is directed to monitoring patient vital signs, i.e. medical monitoring.

It follows from prior Supreme Court cases, and *Bilski* (*Bilski v Kappos*, 561 U.S. 593 (2010)) in particular, that the claims at issue here are directed to an abstract idea. Analogous to the risk hedging in *Bilski* being a fundamental business practice, the concept of medical monitoring is a fundamental medical practice long prevalent in our system of medicine. The use of medical monitoring is also a building block of medical diagnosis since Hippocrates. Thus, medical monitoring, like hedging, is an “abstract idea” beyond the scope of § 101. See *Alice Corp. Pty. Ltd.* at 2356.

As in *Alice*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of medical monitoring at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See Alice Corp. Pty. Ltd.* at 2357.

Further, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. LLC, v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent-ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC, v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 10, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data collection, analysis, and display and does not recite a specific means or method that improves particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 10 is directed to the abstract idea of collecting, analyzing, and displaying data.

The remaining claims merely describe parameters for such analysis and display. We conclude that the claims at issue are directed to a patent-ineligible concept.

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

the 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 pre-emption concern that undergirds our §101 jurisprudence. Given the ubiquity of computers, . . . wholly generic computer implementation is not generally the sort of “additional feature[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice Corp. Pty. Ltd., 134 S. Ct. 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.” *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to collect and display data, even on a graphical interface, amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. 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. Viewed as a whole, Appellants' method claims simply recite the concept of medical monitoring as performed by a generic computer. To be sure, the claims recite doing so by advising one to display physiological measurements on a graphical user interface and update the display when a conventional slider control is moved. But this is no more than abstract conceptual advice on the parameters for such display in a conventional GUI using generic computer processes necessary to process those parameters, and do not recite any particular implementation.

The method 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. The 7 pages of the Specification do not bulge with disclosure, but only spell out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of medical monitoring under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of medical monitoring using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.* at 2360.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

Alice Corp. Pty. Ltd. at 2360.

We are not persuaded by Appellants’ argument that *Alice* “did NOT set forth the broad and sweeping exclusion set forth by the Examiner, namely that any system or method that runs entirely on a computer is inherently only a mathematical formula or relationship and, therefore, is not eligible for patent protection.” App. Br. 6. The Examiner finds that the claims recite little more than some algorithm that analyzes patient data, not that all computer processes are mathematical algorithms. We find the claims to be even more abstract than that, as no particular algorithm is recited.

We are not persuaded by Appellants’ argument that “the claims are not drafted in an attempt to improperly tie up or monopolize the general idea of “displaying the results of mathematical analysis of patient data” because other ways of displaying the data could be implemented without infringing the claims.” App. Br. 8. That the claims do not preempt all forms of the abstraction or may be limited to the abstract idea in the particular setting do not make them any less abstract. *See OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360–1361 (2015). The claims preempt all ways of achieving the results the steps recite because the claims do not recite any particular way of implementing those results. To the extent

Appellants contend that the patient history slider is “both an input and output mechanism” (App. Br. 7), that is the nature of all slider controls in GUI’s, viz. to accept user input in moving the metaphorical slider and alter the output based on such input. Abstract conceptual advice on using a conventional apparatus remains abstract conceptual advice. *See In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 612–613 (Fed. Cir. 2016).

Appellants further argue that the asserted claims are akin to the claims found patent-eligible in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). App. Br. 8–9. In *DDR Holdings*, the Court evaluated the eligibility of claims “address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host’s website after ‘clicking’ on an advertisement and activating a hyperlink.” *Id.* at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no “pre-Internet analog.” *Id.* at 1258. The Court cautioned, however, “that not all claims purporting to address Internet-centric challenges are eligible for patent.” *Id.* For example, in *DDR Holdings* the Court distinguished the patent-eligible claims at issue from claims found patent-ineligible in *Ultramarcial*. *See id.* at 1258–59 (citing *Ultramarcial*, 772 F.3d at 715–16). As noted there, the *Ultramarcial* claims were “directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.” *Id.* at 1258 (quoting *Ultramarcial*, 772 F.3d at 715–16). Nevertheless, those

claims were patent ineligible because they “merely recite[d] the abstract idea of ‘offering media content in exchange for viewing an advertisement,’ along with ‘routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.’” *Id.*

Appellants’ asserted claims are analogous to claims found ineligible in *Ultramercial* and distinct from claims found eligible in *DDR Holdings*. The ineligible claims in *Ultramercial* recited “providing [a] media product for sale at an Internet website;” “restricting general public access to said media product;” “receiving from the consumer a request to view [a] sponsor message;” and “if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query.” 772 F.3d at 712. Similarly, Appellants’ asserted claims recite reading, analyzing, and displaying data. This is precisely the type of Internet activity found ineligible in *Ultramercial*.

We are not persuaded by Appellants’ argument that the apparatus claims recite two computers, a network, a GUI and a slider and that the slider updates a time frame, a trend display and a results display. App. Br. 10. The Specification says the hardware is typical. Spec. para. 17. Usage of conventional hardware with known practices such as GUI is insufficient.

[T]he specifications describe the hardware elements of the invention as “typical” and the software programming needed as “commonly known.” The invention merely claims the addition of conventional computer components to well-known business practices.

Apple, Inc. v. Ameranth, Inc., 842 F.3d 1229, 1242 (2016). Similarly simply claiming results to be achieved without an implementation for achieving them is insufficient.

The patents claim systems including menus with particular features. They do not claim a particular way of programming or designing the software to create menus that have these features, but instead merely claim the resulting systems. *Id.* Essentially, the claims are directed to certain functionality—here, the ability to generate menus with certain features. Alternatively, the claims are not directed to a specific improvement in the way computers operate.

Id. at 1241.

CONCLUSIONS OF LAW

The rejection of claims 1, 2, 4–7, 9, and 10 under 35 U.S.C. § 101 as directed to non–statutory subject matter is proper.

DECISION

The rejection of claims 1, 2, 4–7, 9, and 10 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED