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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEES VAN ZON and WILLIAM P. LORD

Appeal 2016-002870
Application 13/511,205[1]
Technology Center 3600

Before JOSEPH A. FISCHETTI, MICHAEL R. ZECHER, and TARA L. HUTCHINGS, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–23. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

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[1] Appellants identify Koninklijke Philips N.V. as the real party in interest. Appeal Br. 2.

THE INVENTION

Appellants' claims are directed to "[a] system and method for loading and displaying a guideline graph based on a first user input, receiving a second user input selecting a desired portion of the guideline graph and processing the second user input to load and display a sub-graph including the desired portion of the guideline graph." Abstract; Spec. ¶ 4 (stating essentially the same).

Claim 1 reproduced below, is representative of the subject matter on appeal.

> 1. A method, comprising:
>
> loading, by a processor, and displaying, by a display device, a guideline graph based on a first user input;
>
> receiving, by a processor, a second user input selecting a disease;
>
> receiving, by the processor, a third user input selecting a desired portion of the guideline graph; and
>
> processing, by the processor, the third user input to load and display, by the display device, a sub-graph including the desired portion of the guideline graph, the sub-graph including a portion of the guideline graph that includes tasks for a specific user type, wherein the tasks are based on the second user input selecting a disease.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Setteducati	US 2004/0039623 A1	Feb. 26, 2004
Hussain	US 2006/0282302 A1	Dec. 14, 2006
Gress et al.	US 2007/0061176 A1	Mar. 15, 2007

(hereinafter "Gress")		
Ober et al.	US 2007/0185739 A1	Aug. 9, 2007
(hereinafter ("Ober")		
Weidenhaupt et al.	US 2008/0235057 A1	Sept. 25, 2008
(hereinafter "Weidenhaupt")		
Beller et al.	US 2008/0255880 A1	Oct. 16, 2008
(hereinafter "Beller")		

The following rejections are before us for review.

Claims 1–23 are rejected under 35 U.S.C. § 101.

Claims 1, 2, 4, 6, 7, 12, 13, 15, 17, 18, and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gress in view of Ober.

Claims 3, 5, 14, and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gress, Ober, and in further view of Hussain.

Claims 8, 10, 19, and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gress, Ober, and in further view of Weidenhaupt.

Claims 9 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gress, Ober, Weidenhaupt, and in further view of Beller.

Claims 11 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gress, Ober, and in further view of Setteducati.

ANALYSIS

35 U.S.C. § 103(a) REJECTION

Each of independent claims 1, 12, and 23 recites, in one form or another, "the third user input to load and display, a sub-graph including the desired portion of the guideline graph, the sub-graph including *a portion of the guideline graph that includes tasks for a specific user type*."

The Examiner found concerning this limitation,

> Although Gress teaches displaying role-centered representation of a workflow model, Gress does not explicitly *disclose the sub-graph including a portion of the guideline graph that includes tasks for a specific user type*. However, Ober teaches a system to identify healthcare guidelines (see Abstract). Ober [paragraphs] 75, 76 teaches modifying the user interface based on changing conditions and anticipated usage patterns. For example[,] the system will present a particular user with a clinical care protocol interface specific to a particular user's log-in. The examiner considers this to be an example of a graph that includes tasks for a specific user type. It would have been obvious to a person having ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Gress to include a guideline graph that includes tasks for a specific user type as taught by Ober to improve adoption and disciplined use of the system by making the interface easy to use (see Ober para. 75)

(Final Act. 4–5).[2]

Appellants argue,

[2] All references to the Final Action ("Final Act.") refer to the Final Action that was entered on January 2, 2015.

> The Appellants respectfully submit that Ober does not disclose or suggest the displayed "*sub-graph including a portion of the guideline graph that includes tasks for a specific user type, wherein the tasks are based on the second user input selecting a disease*," as recited in claim 1. … The CCP [Clinical Care Protocol] protocol is a condition-specific set of steps in a clinical process of care, and the CCP is based on a knowledge base, where the knowledge base includes clinical guidelines. (*See id.*, ¶¶ 36, 47). In Ober, a clinical guideline is a generally accepted clinical care standard based on medical and expert evidence, which states procedures for treating patients. (*See id.*, ¶ 34). The "doctor guideline" of Ober is applied as a template for creating a clinical protocol for a specific patient. (*See* Ober, ¶¶ 44, 46). . . .
>
> In Ober, there is no indication that the doctor guideline, which is a template, will subsequently display tasks for a specific type of doctor in a "sub-graph." (*See* Ober, ¶¶ 44, 46, 75-76). Ober does not [*sic*] that the doctor guideline itself includes the sub-graph *display* of tasks for a particular set of doctors, where the tasks are based on the disease selection input of a particular user type. (*See id.*, *passim*). In particular, the Examiner cites the Ober patient record [and] reasons a patient is admitted to a medical facility (which the Appellants do not concede are user input selecting a disease) as the "second user input selecting a disease" in claim 1. (*See* 1/2/15 Office Action, p.4). However, since the doctor guideline of Ober is only a *template*, and therefore the basis for creating a clinical protocol for a patient, the doctor guideline template itself is not based on the direct disease selection of a specific doctor. (*See* Ober, ¶¶ 44, 46, 66).

(Appeal Br. 16–17).

We agree with Appellants. Our review of paragraph 75 in Ober reveals that here an "encounter engine, [is disclosed whereby] the system dynamically modifies the user interface based on changing conditions and

anticipated usage patterns." Ober at paragraph 76 discloses a log-in step required by a doctor, but once logged in the result is, "[a]utomatically, the tablet identifies and validates the doctor and retrieves the doctor's list of patients on this particular floor, in [the] particular wing—because the system knows where it is and where the doctor and patients are." Thus, the log-in step in Ober serves as a geo–locater to locate patients on a given floor, and not to present a list of tasks to the doctor. At best, paragraph 76 discloses the "system automatically retrieves the record for Patient A" when "the Doctor walks into room 1027 with 2 patients-A & B." But, this feature merely identifies which of two people's records is retrieved. The ordinary and customary meaning of "task" is "a usually assigned piece of work often to be finished within a certain time."[3] We fail to see the equivalence between a record for patient that is historical in nature, and an assigned piece of work that is prospective in nature.

In the Answer, the Examiner alternatively cites to Gress to meet "the sub-graph including *a portion of the guideline graph that includes tasks for a specific user type*" limitation. *See* Answer 26–27. In so doing, the Examiner now relies on various paragraphs and figures of Gress stating:

> Gress para. 30 discloses in FIGS. 3-7 an exemplary visual representation of the modeled exemplary workflow. FIG. 3 depicts the overall workflow 202 as well as identifies the involved roles 212, activities 214 and artifacts 216. In the visual representation of the workflow, one or more of the depicted graphical elements 202-216 may be hyperlinked to

[3] https://www.merriam-webster.com/dictionary/task (last visited 6/5/18).

> subsequent visual representations, such as those depicted in FIGS. 4-7, or portions thereof, allowing a user to easily navigate through the workflow for the purposes described herein. The examiner considers the subsequent visual representation to be examples of the sub-graphs of the instant claims. Further, Gress para. 31 discloses FIG. 4 depicts the patient intake sub-workflow 204 (or sub-graph) of the workflow 202 of FIG. 3. As such, Gress teaches a guideline graph (item 206 in Fig. 5) and then a sub-workflow (also depicted in Fig. 5). Further, Gress para. 18 teaches each activity has a responsible role, i.e. is performed by one actor (the acting or responsible role), and both input and output artifacts. Further, para. 22 teaches utilizing visual basic macros, consistency checks may be performed and further representations of the model may be generated, e.g. role-centered or artifact centered views. Further, para. 24 teaches the individual "views" furthermore offer different viewing angles on the simulated reality, for instance from the viewpoint of the procedures (workflows), from the viewpoint of a role (by way of the so-called role table), or from the viewpoint of the artifacts (with the aid of which interfaces, for instance, between various disciplines are modeled).

(Answer 26–27).

Appellants in turn argue,

> claim 1 makes it clear that the sub-graph displays the tasks of the specific user type, as opposed to the guideline graph which displays task for all of the user types. It is overly broad to interpret the sub-graph as including tasks for all user types, as suggested by the Examiner, as this interpretation would render the sub-graph no different from the guideline graph. Since the sub-graph is a selected desired portion of the guideline graph, as recited in claim 1, interpretation the two graphs as the same thing would be an unreasonable interpretation. Thus, a person of ordinary skill in the art would not interpret the sub-graph as

> including task for all user types. Therefore, Examiner's arguments regarding the "subsequent visual representation" or "sub-graphs" of Gress (*See* 10/18/15 Examiner's Answer, pp. 26-27) are insufficient to disclose or suggest the "sub-graph" of claim 1 since they include tasks for all user types.

(Reply Br. 7).

We agree with Appellants. Apart from being a new finding presented by the Examiner for the first time in the Answer, our review of Gress at the sections identified above shows that each of the cited examples (e.g., the subsequent depicted graphical elements 202-216, the patient intake sub-workflow 204 (or sub-graph) of the workflow 202, the guideline graph (item 206 in Fig. 5) and the sub-workflow) all merely disclose linked items without distinction. The Examiner has mapped the claimed user–specific tasks to the subsequent depicted graphical elements in Gress. (Answer 26–27). But, the independent claims require that the second user input select a disease, wherein the tasks are based on the second user input selecting that disease. Gress only states that "one or more of the depicted graphical elements 202-216 may be hyperlinked to subsequent visual representations" (Gress, ¶ 30), but Gress does not disclose any nexus between the user and the hyperlink, such as a disease selection, to cause the tasks to be user specific. We are unable to discern, nor does the Examiner explain, how one of ordinary skill in the art looking to Gress would have known to cause the various sub–graphs to be designated "*for a specific user type.*"

Accordingly, we will not sustain the Examiner's obviousness rejection of independent claims 1, 12, and 23. Since claims 2–11 and 13–22 depend

from one of claims 1 and 12, and since we cannot sustain the Examiner's obviousness rejection of claims 1 and 12, the rejection of the dependent claims likewise cannot be sustained. The additional references relied on by the Examiner in rejecting claims 3, 5, 8–11, 14, 16, and 19–22 under 35 U.S.C. § 103(a) do not remedy the deficiencies noted above concerning the independent claims.

35 U.S.C. § 101 REJECTION

We will sustain the rejection of claims 1–23 under 35 U.S.C. § 101.

> 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."

Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept.

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

The steps in representative claim 1 result in: "loading . . . a first user input"; "receiving . . . a second user input"; "receiving . . . a third user input"; and "processing, …the third user input to load and display . . .a sub-graph including the desired portion of the guideline graph, the sub-graph including a portion of the guideline graph that includes tasks for a specific user type, wherein the tasks are based on the second user input selecting a disease."

The Specification states,

> Evidence suggests that many medical errors and inefficiencies in healthcare can be avoided by standardizing clinical care through guidelines and protocols. Thus, clinical guidelines documenting a set of evidence-based recommendations for healthcare professionals on how to optimally diagnose, treat and manage patients have been developed by various medical professional organizations. Typically the recommendations by these organizations are not intended to be rigid rules, but rather are meant to be pieces of evidence to guide their users.

Para. 1. Examiner finds that the abstract idea underlying the independent claims is "processing user inputs to display a guideline graph." Final Act. 2–3; Ans. 12 ("processing and displaying a guideline graph"). Stated

differently, this claim is directed to determining tasks for a specific user type based on a selected disease in a guideline graph. Thus, all this evidence shows that claim 1 is directed to determining tasks for a specific user type based on a selected disease in a guideline graph. It follows from prior Supreme Court cases, and *Gottschalk v. Benson*, 409 U.S. 63 (1972) in particular, that the claims at issue here are directed to an abstract idea. Determining tasks for a specific user type based on a selected disease in a guideline graph represents a method of organizing human behavior because it causes medical professionals (e.g., doctors, nurse practitioners, nurses, etc.) to behave in a given manner according to prescribed guidelines. The patent-ineligible end of the 35 U.S.C. § 101 spectrum includes methods of organizing human behavior. *See Alice Corp.*, 134 S. Ct. at 2355–2356. Also, we find the steps of; selecting a disease, selecting a desired portion of the guideline graph, and basing tasks on the selected disease, constitute "analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016)*; see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014) (claims directed to certain arrangements involving contractual relations are directed to abstract ideas). Thus, determining tasks for a specific user type based on a selected disease in a guideline graph is an "abstract idea" beyond the scope of § 101.

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 an intermediated settlement in *Alice,* and the concept of determining tasks for a specific user type based on a selected disease in a guideline graph, at issue here. Both are squarely within the realm of "abstract ideas" as the Court has used that term. That the claims do not preempt all forms of the abstraction or may be limited to medical guidelines, does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360–61 (Fed. Cir. 2015).

The introduction of a computer (i.e., "a processor" and "a display device") into the claims does not alter the analysis at *Alice* 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 preemption 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., 134 S. Ct. at 2358 (alterations in original) (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.*, 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 retrieve, select, and apply decision criteria to data, modify the data and display results 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. *See Elec. Power Grp.*, 830 F.3d at 1354; *see also In re Katz Interactive Call Processing Patent Litigation*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) ("Absent a possible narrower construction of the terms 'processing,' 'receiving,' and 'storing,' . . . those functions can be achieved by any general purpose computer without special programming"). In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, "even if a process of collecting and analyzing information is 'limited to particular content' or a particular 'source,' that limitation does not make the collection and analysis other than abstract." *SAP America, Inc. v. Investpic LLC*, 890 F.3d 1016, 1022 (Fed. Cir. 2018).

When considering the claim elements as an ordered combination, the computer components (i.e., "a processor" and "a display device") add

nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis-access/presentation is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission); *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring). The ordering of the steps is, therefore, ordinary and conventional.

Viewed as a whole, Appellants' claims simply recite the concept of determining tasks for a specific user type based on a selected disease in a guideline graph. 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 instructions to determine tasks for a specific user type based on a selected disease in a guideline graph. Under controlling precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp.*, 134 S. Ct. at 2360.

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 Specification spells out different generic equipment and parameters that might be applied using this concept (*see* Specification ¶ 11), and the particular steps such conventional processing would entail based on the concept of information access under different scenarios. They do not describe any particular improvement in the manner a computer functions, at least with respect to the claims in the instant application. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of information access using some unspecified, generic computer. Under controlling precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp.*, 134 S. Ct. 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., 134 S. Ct. at 2360 (alterations in original).

We have reviewed all the arguments (Appeal Br. 3–11; Reply Br. 2-4) Appellants have submitted concerning the patent eligibility of the claims before us which stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments which have been made. But, for purposes of completeness, we will address various

arguments in order to make individual rebuttals of same.

Appellants argue,

> The claim addresses issues of reducing medical error and increasing clinical guideline efficiency by managing and loading clinical guidelines, specific to medical clinical guideline managers. This claimed subject matter differs from claims the courts found to recite abstract ideas, because claim 1 does not merely recite the performance of a known practice of "organizing human activity."

(Appeal Br. 5).

We disagree with Appellants. The question is whether the claims, as a whole, "focus on a specific means or method that improves the relevant technology," or are otherwise "directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery." *McRO*, 837 F.3d at 1314. In this case, claim 1, as a whole, is focused on satisfying certain contingencies for "tasks for a specific user type . . . based on the second user input selecting a disease," which is directed to a result or effect, and not a specific means or method that improves the relevant technology.

Appellants also argue,

> In view of the Guidance, the Appellants respectfully submit that the claims are directed toward significantly more than the alleged judicial exception of "organizing human activity" and "determining [guidance] guideline graphs," because independent claims 1, 12, and 23, and their dependent claims recite 1) more than the words "apply it" and an abstract idea, 2) a solution to a technological problem in conventional industry via improvements to the processor performance of receiving a user input selecting a disease and displaying a sub-

> graph including a portion of the guideline graph that includes tasks for a specific user type, where the tasks are based on the second user input selecting a disease, 3) the claims recite specific, additional features that are not well understood, routine, and conventional activities previously known in the industry, and 4) the claims recite meaningful limitations beyond mere general linkage to a particular technology.

(Appeal Br. 6–7).

We disagree with Appellants, and address Appellants' arguments in the order presented.

First, we acknowledge that the claims use more than "apply it" on a computer, but that does not make the claims patent-eligible. That is because our analysis above considers all the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice Corp.*, 134 S. Ct. at 2355. As found *supra*, the claim elements, even as taken in an ordered combination, fail transform the nature of the claim into a patent-eligible application of the abstract idea.

Second, we disagree with Appellants that the claims recite "a solution to a technological problem in conventional industry via improvements to the processor performance." (Appeal Br. 6). From a technological standpoint, the claims, at best, merely require, "a processor", "a memory" and "a display" without mention of any improvement to such item(s). Moreover, Appellants do not direct us to, nor can we find, a disclosure in the

Specification that would support Appellants' argument that the claims at issue here attempt to improve the aforementioned computer components in any way.

Third, Appellants offer no evidence in contradistinction to the Examiner's findings to the well-known and conventional knowledge of the involved interfaces:

> For example, in the current state of the art many business process management and business workflow tools present a display of information that is specific to the role of the user to provide a clearer view of work requirements. Further, the examiner asserts that based on knowledge generally available to those in the art interfaces that display clinical care protocols based on input diseases are also well-known and conventional.

(Answer 19). Such an analysis is a factual determination. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) ("Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination."). Since Appellants' Reply Brief offers no specific argument in rebuttal to these specific findings, Appellants' arguments are unpersuasive on this point too.

As to the fourth point argued by Appellants, that the claims recite meaningful limitations beyond mere general linkage to a particular technology, we refer to our analysis above directed to Appellants' first point. Additionally, as we found *supra*, those portions of the claims which are not directed to technology (e.g., "a processor" or "a display)" are nevertheless directed to the abstract idea of determining tasks for a specific user type

based on a selected disease in a guideline graph. Although the limitation is meaningful, it is meaningful only as an abstraction and is patent-ineligible.[4]

We disagree with Appellants that "the steps in claim 1 are not a familiar part of the conscious process that doctors can and do perform in their heads, as was the case in SmartGene." (Reply Br. 4). The claims in *SmartGene,*[5] unlike those before us, required rules which a medical practitioner would engage in to effect care for the patient, which, in turn, are used by the computer to generate a ranked listing of therapeutic treatment regiments. There are no such rules and automated ranking required by the claims on appeal here. Moreover, displaying a guideline graph to a user does not make an otherwise ineligible claim, patent-eligible, because the nub of the process, the basing of tasks on a selected disease, would be the same. Thus, to the extent the claims require a display of data, this is limited to insignificant extra solution activity not covered under 35 U.S.C. § 101. *See In re Schrader*, 22 F. 3d 290, 294 (Fed. Cir. 1994) (recording step of the claimed process is incapable of imparting patent-eligibility under 35 U.S.C. § 101). Therefore, we do not find Appellants' argument persuasive.

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[4] Section 101 of Title 35 of the United States Code sets out the subject matter that can be patented: "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title."

[5] *SmartGene, Inc. v. Advanced Biological Laboratories, SA*, 555 F. App'x (Fed. Cir. 2014).

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1–23 under 35 U.S.C. § 101.

We conclude the Examiner did err in rejecting claims 1–23 under 35 U.S.C. § 103(a).

DECISION

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision to reject claims 1–23 is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

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).

AFFIRMED