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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT EMMONS HASKELL, CARMELA ANNE COUDERC,
SUSAN ANNETTE MATNEY, MARY ELLEN DLUGOS, and
REBECCA RAE DaDAMIO

Appeal 2016-003471
Application 12/433,471¹
Technology Center 3600

Before ANTON W. FETTING, BRUCE T. WIEDER, and
MATTHEW S. MEYERS, *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 1–5 and 7–28. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is Cerner Innovation, Inc. (Appeal Br. 3.)

CLAIMED SUBJECT MATTER

Appellants' claimed invention relates to “[a] processing device implemented system [that] provides a plan of care for a patient.” (Spec. p. 2, l. 15.)

Claims 1, 16, and 28 are the independent claims on appeal. Claim 1 is illustrative. It recites:

1. A processing device implemented system supporting providing a plan of care for a patient, comprising:
 - at least one computer system comprising:
 - at least one repository comprising:
 - data representing a plurality of different non-patient specific, clinical application independent, disease non-specific, interdisciplinary plans of care, each interdisciplinary plan of care having a plurality of problems; and
 - clinical application specific selectable attribute properties providing operating instruction to a respective clinical application independent plan of care application directing operation of the clinical application independent plan of care application for a specific clinical function;
 - a data processor configured to search data in said at least one repository to: (i) identify one or more candidate disease non-specific, interdisciplinary plans of care from the plurality of disease non-specific, interdisciplinary plans of care; and (ii) associate a selected plan of care with at least one of said plurality of problems in response to user entry of data identifying said at least one of said plurality of problems by searching data in said at least one repository for an identifier associated with said at least one of said plurality of problems and employing the clinical application specific attribute properties in adapting a clinical application independent, disease non-specific, interdisciplinary plan of care for a specific clinical application;

a display processor configured to generate display data including said one or more candidate disease non-specific, interdisciplinary plans of care, and

an edit processor configured to edit, responsive to one or more editing user inputs, a template plan of care accessed from said at least one repository to create a new template plan of care for storage in said at least one repository,

wherein said data processor searches data in said at least one repository to identify the at least one of said plurality of problems in response to user entered data identifying an expected outcome of patient treatment according to a plan of care, and

said edit processor is configured to edit, responsive to the one or more editing user inputs, values representing orders for treatment to be administered to a patient in said template plan of care to create said new template plan of care.

REJECTION

Claims 1–5 and 7–28 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

ANALYSIS

In 2014, the Supreme Court decided *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014). *Alice* applies a two-step 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-step 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 step 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).

With regard to step one of the *Alice* framework, the Examiner determines that “the independent claims are directed to developing care plans, which is merely the mental process a physician should follow when developing a plan of care for a patient, which is merely an abstract idea of a method of organizing human activities.” (Answer 4.) More specifically, the Examiner determines that

[t]he independent claims are directed to a system that searches data in various repository [sic] to identify a candidate plan of care that has a plurality of problems, identify one of said plurality of problems in response to user input of data, associate a selected plan of care with at least one of said plurality of problems utilizing data from the repositories, display the candidate plan of care, and provide editing functionality of a template plan of care and values input into the template plan of care.

(*Id.* at 3–4.)

Appellants disagree and argue that the claim

limitations include a data processor that searches data to identify one or more candidate disease non-specific, interdisciplinary plans of care from a plurality of disease non-specific interdisciplinary plans of care and associates a selected plan of care with at least one of said plurality of problems in response to user entry of data identifying at least one of the problems by searching the repository for an identifier associated with said at

least one of said plurality of problems and employing the clinical application specific attribute properties in adapting a clinical application independent, disease non-specific, interdisciplinary plan of care for a specific clinical application.

(Appeal Br. 9.)

Under step 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. DIRECTV, 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.”

The Specification provides evidence as to what the claimed invention is directed. In this case, the Specification discloses that the invention relates to “[a] processing device implemented system [that] provides a plan of care for a patient.” (Spec. p. 2, l. 15.) Claim 1 recites “[a] . . . system . . . comprising: . . . at least one repository comprising: data,” “a data processor configured to search data in said at least one repository to: (i) identify one or more candidate disease . . . plans of care; and (ii) associate a selected plan of care with at least one of said plurality of problems in response to user entry of data identifying said . . . problems,” “a display processor configured to generate display data including . . . plans of care,” and “an edit processor configured to edit . . . a template plan of care accessed from said . . . repository to create a new template plan of care,” “wherein said data processor searches data in said at least one repository,” “and said edit processor is configured to edit . . . values representing orders for treatment” (Claim 1.)

Without the processor elements, nothing remains in the claim but the abstract idea of searching in “at least one repository to: (i) identify one or more candidate disease . . . plans of care,” “(ii) associate a selected plan of care with at least one of said plurality of problems in response to user” identified problems, “display . . . plans of care,” and edit “a template plan of care accessed from said . . . repository to create a new template plan of care.” As in *Alice*, we need not labor to delimit the precise contours of the “abstract idea” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of “collecting information, including when limited to particular content (which does not change its character as information),” “analyzing information by steps people go through in their minds, or by mathematical algorithms,” and “presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation),” *Elec. Power Grp.*, 830 F.3d at 1353–54, and the concept of identifying/collecting plans of care, associating/analyzing a plan of care with user identified problems, and displaying/presenting the results. The additional step of allowing a user to edit and input a new template plan of care does not change our analysis.

Although we describe what the claims are directed to at a different level of abstraction than the Examiner and the Appellants, we note that “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). However, that need not and, in this case does not, “impact the patentability analysis.” *See id.* at 1241.

Appellants further argue that the claims are not directed to an abstract idea because “the claims do not seek to preempt others from generating interdisciplinary care plans.” (Appeal Br. 13.) Preemption, however, 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) (Lourie, J., concurring), *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.*

In view of the above, we are not persuaded that the Examiner erred in determining that claim 1 is directed to an abstract idea.

Step 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*, 566 U.S. at 72–73).

The introduction of a computer or processor into the claim 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 “implemen[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 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.

Appellants argue that “the claims, as a whole, are ‘necessarily rooted’ in and address a technological challenge ‘confined to a computer technology.’” (Appeal Br. 13, citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).) Specifically, Appellants argue that “the claims address the technological challenge of not being able to easily share data across systems that do not use common and semantically

consistent definitions, and not promoting consistent data usage across a healthcare enterprise or different enterprises.” (*Id.*)

As an initial matter, we note that Appellants’ argument is not commensurate with the scope of claim 1 and thus, we do find it persuasive of error. We also do not find this argument persuasive of error because, unlike the claims here, 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.

Here, taking the claim elements separately, the function performed by the processor at each step is purely conventional. Collecting, analyzing, and presenting information are basic computer functions. Moreover, the Specification discloses that the invention can be implemented using generic computer components. (*See, e.g., Spec. p. 7, l. 1–p. 11, l. 21.*) In short, each step does no more than require a generic processor to perform routine processing functions.

Considered as an ordered combination, the processing 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 processor 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 using generic processing circuitry. That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Appellants further argue that “the claims of the present Application include elements or computer functions that are not well-understood, routine and conventional in the field, as evidenced by the absence of prior-art-based rejections” (Appeal Br. 16–17.) “The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981). Thus, in this case, we do not find the evidence of an absence of a prior art rejection to be persuasive of error.

Nor do we find persuasive of error Appellants’ argument that the computer function is not routine or conventional because “the recited processors must be programmed to perform the specific functions.” (Appeal Br. 17–18.) “These claims in substance [are] directed to nothing more than the performance of an abstract business practice . . . using a conventional computer. Such claims are not patent-eligible.” *DDR Holdings*, 773 F.3d 1245, 1256 (Fed. Cir. 2014).

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1 under § 101. Claims 2–5 and 7–28 are not separately argued and fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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DECISION

The Examiner's rejection of claims 1–5 and 7–28 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