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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL S. BRODER

Appeal 2016-004162
Application 12/474,611
Technology Center 3600

Before MURRIEL E. CRAWFORD, MICHAEL C. ASTORINO, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1–19. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

BACKGROUND

Appellant's invention is directed to a method of compiling and analyzing the stored data in a graphical format that allows a user to quickly make general and individual assessments of the results of the data. Spec. 1.

Claim 1 is illustrative:

1. A tool for evaluating a large amount of medical data pertaining to numerous patients in a selected medical study, where a treatment of each patient is displayed graphically, the tool comprising:

a display medium for displaying a multi-axis graph, the display medium including an orthogonal axis system with a first axis corresponding to a treatment duration and a second axis corresponding to a number of patients;

a single view graphical representation displayed on the display medium comprising a series of line segments aligned with the time axis, each line segment corresponding to respective ones of the patient's medical data with each patient's medical data represented by a line segment;

the line segment having a length corresponding to a period of time that the corresponding patient's medical data was obtained; and

the graphical representation depicting the medical data via said line segments for every patient in the study.

Claims 1–19 are rejected under 35 U.S. C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more.

PRINCIPLES OF LAW

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In determining whether a claim falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–98 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (“Analyzing respondents’ claims according to the above statements from our cases, we think that a physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter.”); *Parker v. Flook*, 437 U.S. 584, 594–95 (1978) (“Respondent’s application simply provides a new and presumably better method for calculating alarm limit values.”); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972) (“They claimed a method for converting binary-coded decimal (BCD) numerals into pure binary numerals.”).

The patent-ineligible end of the spectrum includes fundamental economic practices, *Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611; mathematical formulas, *Flook*, 437 U.S. at 594–95; and basic tools of scientific and technological work, *Gottschalk*, 409 U.S. at 69. On the patent-eligible side of the spectrum are physical and chemical processes, such as curing rubber, *Diamond*, 450 U.S. at 184 n.7, “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores,” and a process for manufacturing flour, *Gottschalk*, 409 U.S. at 69.

If the claim is “directed to” a patent-ineligible abstract idea, we then consider 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*, 134 S. Ct. at 2355. This is a search for an “inventive concept”—an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.*

In addition, the Federal Circuit has held that if a method can be performed by human thought alone, or by a human using pen and paper, it is merely an abstract idea and is not patent-eligible under § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”).

ANALYSIS

The Examiner determined that the claims are directed to the abstract idea of “collecting and storing medical data in a selected storage device, perform statistical analysis on the stored medical data, displaying and arranging patient’s medical data on a single-view graph using line segments,

and evaluating the graph to determine patterns from among the patient treatment data.” Final. Act. 2. The Examiner found that the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements amount to no more than generic computer structure that serves to perform generic computer functions that serve the merely link the abstract idea to a particular technological environment. Final. Act. 2–3.

Appellant argues that the Office Action does not include a justification for arriving at the conclusion that the claimed subject matter is an abstract idea. Specifically, the Appellant argues that there is no case law to support the determination. App. Br. 5. We do not agree.

In our view claim 1 recites a tool for evaluating a large amount of data including a medium for displaying data. The display includes a multi-axis graph including an orthogonal axis system with first and second axes and a single view graphical representation comprising a series of line segments. We hold that the claim is directed to the display and analysis of data. 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 1, unlike the claims held non-abstract in prior cases, uses generic computer technology to perform data analysis and display and does not recite an improvement to a 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 1 is directed to the abstract idea of analyzing and displaying data.

We likewise, are not persuaded of error by the Appellant’s argument that the claims do not tie up all display of aggregate patient data. App. Br. 6. While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir.), *cert. denied*, 136 S. Ct. 701 (2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”). And, “[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*, 788 F.3d at 1379.

Appellant directs our attention to the declaration of Dr. Jenya Antonova and states that the declaration is evidence that the invention is directed to a new tool for analyzing medication data unrecognized in the field. App. Br. 6.

We have reviewed the declaration of Dr. Antonova in which she avers that the invention concisely depicts multiple layers of information such as types of medication, duration and their use and patterns from one another and that this depiction is a novel and unique way to summarize healthcare data (para. 10). Appellant, by reliance on this declaration, is arguing that the pending claims recite “significantly more” because the claimed invention is

“novel” and “non-obvious,” but Appellant misapprehends the controlling precedent. Although the second step in the *Alice/Mayo* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “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. A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

Appellant also argues that the graph that is depicted in Figure 4 is a transformation of individual treatments of individual patients into a single comprehensive tool for evaluating a treatment and therefore transforms traditional data into a different thing. App. Br. 7. To the extent that Appellant argues that the claims are patent-eligible because they satisfy the transformation prong of the machine-or-transformation test set forth in *Bilski*, we note that the alleged “transformation” is a manipulation of data, which is not sufficient to meet the transformation prong under § 101. *See Gottschalk*, 409 U.S. at 71–72 (holding that a computer-based algorithm that merely transforms data from one form to another is not patent-eligible).

In view of the foregoing, we will sustain the Examiner’s rejection of claim 1. We will also sustain the Examiner’s rejection of the remaining claims because the Appellant has not argued the separate patent eligibility of these claims.

DECISION

We affirm the Examiner’s § 101 rejection.

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TIME PERIOD

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) (2009).

ORDER
AFFIRMED