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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHUCK LEE

Appeal 2016-004242
Application 11/946,655¹
Technology Center 3600

Before NINA L. MEDLOCK, BRUCE T. WIEDER, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 21, 22, and 24–27. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ “The real party in interest in connection with the present appeal is Charles ‘Chuck’ Lee, the only named inventor of the present Application.” Appeal Br. 1.

ILLUSTRATIVE CLAIM

21. A system for tracking and maintaining vascular access medical records, comprising:
- a data storage connected to a communication network;
 - a database associated with the data storage;
 - a patient record for a vascular access patient stored in the database, wherein the patient record includes
 - a new vascular access service request field effective to receive a new service request from a first healthcare provider,
 - a past service record containing past vascular access service requests from at least a second healthcare provider,
 - a vascular access service entry field effective to receive vascular access service results data from a vascular access practitioner in association with a service request, said service results data comprising an IV insertion status and existing IV type, and
 - a vascular access post-service entry field in the patient profile effective to receive post-service data comprising a vascular access site evaluation incident to the new vascular access service request from the vascular access practitioner;
 - a host computer connected to the communication network and effective to
 - distribute the new service request across the communications network to a remote network device associated with a vascular access practitioner,
 - provide access by the vascular access practitioner to the past service record via the remote network device and the communications network,
 - generate a post-service report in the patient profile comprising the post-service data, and

update the past service record by aggregating the new vascular access service request from the first provider and at least the past vascular access service request from the second provider.

CITED REFERENCES

Meyer et al. (hereinafter “Meyer”)	US 2001/0049277 A1	Dec. 6, 2001
Shapiro et al. (hereinafter “Shapiro”)	US 2005/0075544 A1	Apr. 7, 2005
Vournakis et al. (hereinafter “Vournakis”)	US 2005/0075597 A1	Apr. 7, 2005
Staton	US 2006/0020490 A1	Jan. 26, 2006
Clements et al. (hereinafter “Clements”)	US 2006/0271400 A1	Nov. 30, 2006

REJECTIONS

I. Claims 21, 22, and 24–27 are rejected under 35 U.S.C. § 101 as ineligible subject matter.

II. Claims 21, 22, 24, and 26–27 are rejected under 35 U.S.C. § 103(a) as unpatentable over Clements, Shapiro, Vournakis, and Staton.

III. Claim 25 is rejected under 35 U.S.C. § 103(a) as unpatentable over Clements, Shapiro, Vournakis, Staton, and Meyer.

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

ANALYSIS

Subject-Matter Eligibility

Applying the first step of the methodology delineated in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2355 (2014), the

rejection states that claim 21 is directed to the abstract idea of “receiving a new service request, associating the new service request with patient profile, distributing the service request across the communications network, providing access to the past service record, generating post service report, and updating past service record.” Final Action 2.

Further, as to the second step of the *Alice* analysis, the rejection states that the claims do not include any additional elements amounting to significantly more than the identified abstract idea, because the additional elements, individually or in combination, merely recite generic computer structure for performing generic and conventional computer functions that do no more than link the abstract idea to a particular technological environment. *Id.* at 3.

Disputing the rejection, the Appellant argues claims 21, 22, and 24–27 as a group. Appeal Br. 23–27. Claim 21 is selected for analysis herein. *See* 37 C.F.R. § 41.37(c)(1)(iv).

According to the Appellant, in regard to the first *Alice* step, “the concept of aggregating patient-specific vascular access information across a continuum of healthcare providers is not a fundamental or longstanding commercial practice, which is merely applied in a new manner using data storage networks and computer systems, but is asserted as a new concept of itself.” Appeal Br. 26.

Yet, the Examiner does not characterize the identified abstract idea as a fundamental economic practice. The Examiner, instead, compares the claim to concepts that courts have determined to constitute abstract ideas. *See* Answer 4–5. The Examiner’s approach is proper, because “the decisional mechanism courts now apply,” for evaluating whether a claim is

directed to an abstract idea, “is to examine earlier cases in which a similar or parallel descriptive nature can be seen — what prior cases were about, and which way they were decided.” *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016). Notably, the Examiner’s Answer (pages 4–5) states that the claimed subject matter is similar to the use of categories to organize, store, and transmit information, which the Federal Circuit regarded as an abstract idea in *Cyberfone. See Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App’x 988, 991–992 (Fed. Cir. 2014) (nonprecedential) (“[T]he well-known concept of categorical data storage, *i.e.*, the idea of collecting information in classified form, then separating and transmitting that information according to its classification, is an abstract idea that is not patent-eligible.”)

The Appellant also alleges error in the rejection, because the identified abstract idea “is merely a recitation of claim elements, presumably each of which is intended as being similar to some concept identified by courts as an abstract idea, but without appropriate citation as such.” Reply Br. 4.

This argument is unpersuasive of error. “An abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). Thus, there is no rigid catechism for determining how closely an identified abstract idea, to which a claim is directed, must track the claim language. *See Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017) (“[W]e see no error here in the district court citing to the preamble in its review of whether the claims are directed to an abstract idea.”)

Nor are we persuaded by the Appellant’s contention that “the claimed invention does not preempt all uses of an abstract idea, as the patentable subject matter has a finite scope respective to the concomitant contribution of the inventor.” Appeal Br. 24. *See also, id.* at 26–27. The requisite preemption analysis is performed according to the *Alice* framework itself and “[w]hile 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).

The Appellant also argues that claim 21 would be patent-eligible, under the second *Alice* step:

Assuming, *arguendo*, that an “abstract idea” at the heart of each claim is “organizing aggregated patient information and creating report (passing around),” as cited in the Office Action, the claimed invention includes “additional features to ensure that the claim describes a process or product that applies the [abstract idea] in a meaningful way, such that it is more than a drafting effort designed to monopolize the [abstract idea].” *See* 2014 Interim Guidance on Subject Matter Eligibility from the USPTO (“Interim Guidance”), Federal Register/Vol. 79, No. 241 at 74624.

Appeal Br. 24–25. According to the Appellant, the claimed subject matter recites specific limitations — other than what is well-understood, routine, or conventional — that confine the claim to a particular useful application. *Id.* at 25. Further, “the claimed system and associated operations when considered as a whole are themselves unconventional, and therefore eligible subject matter satisfying § 101, without reliance on reference to generic computer components or communications media.” *Id.* “For example,” the Appellant contends, “the claims recite meaningful limitations wherein

specific data records are accumulated for specific patients across a newly defined network of healthcare providers.” *Id.* Still further, the Appellant contends that “the claimed invention recites a specific combination of elements collectively defining a new concept, to overcome a specific problem specifically arising in the realm of vascular access medical records.” *Id.* at 27.

The Appellant’s arguments, addressing the second *Alice* step, are not persuasive. As an initial matter, the Appellant does not clearly articulate which claim elements (whether alone or in combination) purportedly amount to significantly more than the abstract idea. Furthermore, the Appellant’s characterization of such “meaningful limitations” as “specific data records are accumulated for specific patients across a newly defined network of healthcare providers” (*id.* at 25) does not differ significantly from the Examiner’s characterization of the abstract idea — i.e., “receiving a new service request, associating the new service request with patient profile, distributing the service request across the communications network, providing access to the past service record, generating post service report, and updating past service record” (Final Action 2). Notably, the Appellant’s characterization of such claim element(s) is even less detailed and less particularized than the Examiner’s description of the identified abstract idea itself. Therefore, the Appellant has not persuaded us of error in the Examiner’s application of the second *Alice* step.

Finally, the Appellant argues that each of the dependent claims has not been fully analyzed under the *Alice* framework. Reply Br. 5. Yet, the Appellant, in the Appeal Brief, elects to argue all appealed claims (including the dependent claims) as a group. *See* Appeal Br. 23–27. Moreover, the

Appellant has not presented any separate argument with respect to any dependent claim.

Accordingly, we sustain the rejection of claims 21, 22, and 24–27 under 35 U.S.C. § 101.

Obviousness

Among the Appellant’s arguments contesting the obviousness rejection, the Appellant contends that the Examiner failed to consider objective indicia of non-obviousness — specifically, that the claimed subject matter fulfilled a long-felt and unmet need in the art. Appeal Br. 20–21. The Appellant’s argument is supported by previously submitted items — a declaration and a collection of publications — addressing the alleged benefits of the claimed subject matter. *Id.* at 21 (citing Declaration of Chuck Lee, dated July 11, 2014, and Ex. A to the Appeal Brief).

Obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). This includes objective indicia of nonobviousness, such as long-felt but unsolved needs, failure of others, and commercial success. *In re Huang*, 100 F.3d 135, 139 (Fed. Cir. 1996) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966)). As the Federal Circuit has emphasized, “[o]bjective indicia of nonobviousness play a critical role in the obviousness analysis.” *Leo Pharm. Prods., Ltd. v. Rea*, 726 F.3d 1346, 1358 (Fed. Cir. 2013). These indicia are not a cumulative or confirmatory part of the obviousness analysis, but rather constitute independent evidence of nonobviousness that can be the most probative evidence for “avoiding the trap of hindsight when reviewing, what otherwise

seems like, a combination of known elements.” *Id.* During the course of evaluating the obviousness of claimed subject matter, if evidence of objective indicia having “adequate weight is produced, the holding of *prima facie* obviousness . . . is dissipated.” *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). “Regardless of whether the *prima facie* case could have been characterized as strong or weak, the examiner must consider all of the evidence anew.” *Id.*

Here, the Examiner did not address the Appellant’s proposed secondary consideration evidence.

Accordingly, we do not sustain the rejection of claims 21, 22, and 24–27 under 35 U.S.C. § 103(a).

DECISION

We AFFIRM the Examiner’s decision rejecting claims 21, 22, and 24–27 under 35 U.S.C. § 101.

We REVERSE the Examiner’s decision rejecting claims 21, 22, and 24–27 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED