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EXAMINER

HUNTER, SEAN KRISTOPHER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS HANF and CHRISTOPHER FINN

Appeal 2016-004431
Application 12/651,105¹
Technology Center 3600

Before JOHN A. EVANS, NORMAN H. BEAMER, and SCOTT E. BAIN,
Administrative Patent Judges.

BAIN, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 3–6, 9, 10, and 13–15, which constitute all claims pending in the application. Claims 2, 7, 8, 11, 12, and 16 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellants identify the real party in interest as Cerner Innovation, Inc. App. Br. 3.

STATEMENT OF THE CASE

The Claimed Invention

According to the Specification, “new standards of care and [new] knowledge” in the health care field often are slow to be integrated into the actual practice of clinicians in a health care entity. Spec. ¶¶ 4–5.

Accordingly, the claimed invention is directed to computer-implemented updating of a patient’s care plan with newly acquired “clinical knowledge,” so patients may receive the highest, most up to date level of care. *Id.* ¶¶ 3–6. Claim 1, the lone independent claim, is illustrative of the invention and reads as follows:

1. One or more non-transitory computer-readable media storing computer-useable instructions that, when used by one or more computing devices, cause the one or more computing devices to perform a method for presenting a healthcare entity with an option to automatically analyze a set of patient records of the healthcare entity's patient population with regard to a piece of clinical information, the method comprising:

receiving a clinical knowledge publication from a third-party publication source recognized by the healthcare entity as an authority for medical or healthcare-related clinical knowledge;

analyzing the clinical knowledge publication for a relevant piece of clinical information comprising an update to a standard of care guideline;

extracting the relevant piece of clinical information from the clinical knowledge publication;

transforming the relevant piece of clinical information into executable code;

distributing a uniform resource identifier (URI) to the executable code to the healthcare entity, wherein selection of the URI by the healthcare entity initiates execution of the executable

code against the set of patient records to register matches of the relevant piece of clinical information with data contained in the set of patient records; and

initiating system activity based on the results of the matching, wherein the system activity includes editing information regarding the update to the standard of care guideline within a file of the healthcare entity.

App. Br. 16 (Claims App.).

The Rejection on Appeal

Claims 1, 3–6, 9, 10, and 13–15 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 2–5.

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellants’ arguments presented in this appeal. Arguments which Appellants could have made but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). On the record before us, we are unpersuaded the Examiner has erred. We adopt as our own the findings and reasons set forth in the rejections from which the appeal is taken and in the Examiner’s Answer, and provide the following for highlighting and emphasis.

Appellants argue the Examiner erred in concluding the claims are directed to an abstract idea and therefore constitute ineligible subject matter. App. Br. 7–14.² Specifically, Appellants argue (under step one of *Alice*) claim 1 on its face is not directed to the abstract idea of “providing healthcare,” because the phrase “providing healthcare” appears nowhere in the claim, and the claim includes detailed limitations directed to “analyzing

² Appellants argue all claims as a group, and we choose claim 1 as representative of the group. 37 C.F.R. § 41.37(c)(1)(iv).

patient records” with respect to “clinical knowledge.” App. Br. 7–8.

Appellants further argue (under step two of *Alice*) even if claim 1 as a whole were directed to an abstract idea, it recites features “sufficient to ensure the claim[] amount[s] to significantly more than the abstract idea[] itself.” App. Br. 9. The additional features include, according to Appellants, a computer with a “non-generic structure that performs non-routine and non-conventional computer functions,” that “transforms” data into a different state or thing, and that does not preempt all means of providing healthcare. App. Br. 9–14. We, however, are not persuaded by Appellants’ arguments.

The Supreme Court has long interpreted § 101 to include an implicit exception, excluding from patentability “[l]aws of nature, natural phenomena, and abstract ideas.” See, e.g., *Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014). In *Alice*, the Court reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, 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. The first step is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea, as the Examiner concludes in this case. If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78).

As to step one of *Alice*, the Examiner concludes claim 1 is directed to the “basic concept of providing healthcare” based upon the best clinical information available to the physician or other healthcare provider. Final Act. 2; Ans. 4–6. We agree. The claim recites a computing element that performs the functions of analyzing information (patient record), collecting information (clinical knowledge publication), analyzing the information collected, and then distributing further data (code and a URL, matching the clinical knowledge to patient record). App. Br. 16. We discern no error in the Examiner’s conclusion that the foregoing elements are little more than the collection and manipulation of information or data related to health care. Ans. 4; Final Act. 3–4; *see also Elec. Power Grp., LLC v. Alstrom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“collecting information, including when limited to particular content” is an abstract idea). Although the claim also recites “distributing” code and “updating” information as a result of the data analysis performed, “the result[] of abstract processes of collecting and analyzing information, without more . . . is abstract as an ancillary part of such collection and analysis.” *Elec. Power*, 830 F.3d at 1354. Accordingly, on this record, we are not persuaded the Examiner erred in finding claim 1 abstract under step one of the *Alice* test.

As to *Alice* step two, the Examiner finds, and we agree, Appellants’ Specification contradicts the argument, App. Br. 9–10, that computing elements recited in the claim are “non-generic.” Ans. 5. The Specification explains the “invention is operational with *numerous . . . general purpose* or special purpose computing system environments or configurations” including personal computers, server computers, hand-held or laptop devices, and cellular telephones. Spec. ¶ 19 (emphasis added); Ans. 5.

Moreover, the Specification further states the “computing system environment [disclosed therein] is *only one example of a suitable computing environment and is not intended to suggest any limitation.*” Spec. ¶ 18 (emphasis added); *see also* Spec. ¶ 21 (“exemplary system for implementing the invention includes a general purpose computing device”). Accordingly, we are not persuaded by Appellants’ contention that the claims are implemented by a “computer with a non-generic structure that performs non-routine and non-conventional computer functions.” App. Br. 9; *cf. DDR Holdings, LLC v. Hotels.com, LP*, 773 F.3d 1245 (Fed. Cir. 2014).

Appellants further argue claim 1 “transforms” subject matter and does not preempt the field of providing healthcare. App. Br. 11–14. As the Examiner finds, however, the alleged “transformation” claim 1 recites is, simply, a script and URL added to health care information that will “allow the particular healthcare entity to ‘update to the standard of care guideline within a file.’” Ans. 6–7. Moreover, even a more tangible transformation (and alleged lack of preemption) do not demonstrate error in the Examiner’s findings or conclusion. *See, e.g., FairWarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016); *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015). Accordingly, on the record before us, we discern no error in the Examiner’s conclusion that claim 1 does not recite features sufficient to demonstrate that it amounts to “significantly more than the abstract idea itself.” App. Br. 9.

For the foregoing reasons, we sustain the non-statutory subject matter rejection of claims 1, 3–6, 9, 10, and 13–15.

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DECISION

We affirm the Examiner's rejections of claims 1, 3–6, 9, 10, and 13–15.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED