UNITED STATES PATENT AND TRADEMARK OFFICE

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Maginot, Moore & Beck LLP	TOMASZEWSKI, MICHAEL
One Indiana Square, Suite 2200	
Indianapolis, IN 46204	

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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte RAJIB GHOSH and HENNING HAYN[1]
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Appeal 2016-006056
Application 13/736,732
Technology Center 3600
_____

Before JOHNNY A. KUMAR, CATHERINE SHIANG, and JOYCE
CRAIG, *Administrative Patent Judges*.

KUMAR, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final
Rejection of claims 1–6 and 12–17. Claims 7–11 and 18–24 are cancelled.
We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

[1]According to Appellants, Robert Bosch Healthcare Systems, Incorporated
of Palo Alto, California and Robert Bosch GmbH of Stuttgart, Germany are
the real parties of interest in this application. *See* App. Br. 3.

Representative Claim

1. A method for assessment of a patient comprising:

    receiving with a processor communicatively connected to a data network nonmedical data corresponding to a patient from a social network service that is connected to the data network;

    identifying with the processor a location information for the patient indicating a location of travel for the patient with reference to the non-medical data from the social network service;

    identifying with the processor at least one prescription medication associated with the patient in patient medical records stored in a memory operatively connected to the processor in response to the location of travel exceeding a predetermined distance from a home address associated with the patient;

    generating with the processor a message including a reminder for the patient to travel with a supply of the at least one prescription medication; and

    sending with the processor the message to an electronic device associated with the patient through the data network.

Rejection

A. Claims 1–6 and 12–17 are rejected under 35 U.S.C. § 101 as being directed to a judicial exception.

Grouping of Claims

Based on Appellants' arguments (App. Br. 7–15), we decide the appeal on the basis of representative claim 1.

ANALYSIS

We have considered all of Appellants' arguments and any evidence presented. We disagree with Appellants' arguments and we adopt as our own the findings, legal conclusions, and explanations, as set forth in the Answer (3–7) in response to Appellants' arguments. (App. Br. 7–15; Reply

Br. 2–6). We highlight and address specific findings and arguments for emphasis in our analysis below.

Issue: Under § 101, did the Examiner err in concluding claim 1 is directed to patent-ineligible subject matter?[2]

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." The Supreme Court, however, has long interpreted § 101 to include an implicit exception: "[l]aws of nature, natural phenomena, and abstract ideas are not patentable." *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013) (internal quotation marks omitted)). In *Alice*, the Supreme Court set forth an analytical "framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71–73 (2012)).

The first step in our analysis is to determine whether the claims at issue are directed to a patent-ineligible concept, such as an abstract idea. *See Alice*, 134 S. Ct. at 2355.

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to "consider the elements of each claim both individually and 'as an ordered combination' to determine whether [there

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[2] We consider the claims as a whole and give the claim limitations the broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

are] additional elements [that] 'transform the nature of the claim' into a patent-eligible application." *Id.* (quoting *Mayo*, 566 U.S. at 78).

In other words, the second step is to "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.'" *Id.* (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73).

Alice — **Step One**

Here, regarding the judicially created "abstract idea" exception (*Alice,* Step One), Appellants argue *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) ("*Enfish*") clarifies specific requirements for properly analyzing whether claims are actually directed to an abstract idea (Reply Br. 5–6) and contend, *inter alia:*

> As presented in the Appeal Brief and in this Reply Brief, the pending claims are clearly directed to an improvement for operation of a computerized system.

(Reply Br. 5.)

In the Appeal Brief, Appellants contend:

> Instead, claim 1 requires that an assessment method that uses a processor to identity a location information for the patient indicating a location of travel for the patient with reference to the non-medical data from the social network service. Thus, claim 1 is directed to a method of automated assessment and communication that uses data pertaining to the social network messages in a portion of the method . . . .
>
> . . . .
>
> . . . . Claim 1 requires using a processor to receive non-medical data corresponding to a patient from a social network service and identifying location information of a travel location of travel for

the patient. These specific limitations of claim 1 are nowhere to be found in the proposed abstract idea. Furthermore, claim 1 also requires that the processor identify a prescription medication in response to an identified distance of travel from the home address to the travel location exceeds a predetermined threshold and then transmit a reminder message about traveling with a supply of the prescription to an electronic device associated with the patient. Consequently, far from being directed to the proposed abstract idea of sending messages to provide healthcare, claim 1 is directed to a specific and non-abstract patient assessment method that combines specific automated processing of non-medical social network data that are not typically provided to healthcare providers, specific geographic processing in the physical world to identify travel destinations and the distance of travel, and transmission of specific reminder messages that are directly related to the need to travel with prescription medications during travel.

App. Br. 9–10.

We find Appellants' arguments unpersuasive. We conclude claim 1 is directed to a generic processor performing mathematical calculations on certain data. We note the Supreme Court in *Alice* cautions that merely limiting the use of an abstract idea "to a particular technological environment" or implementing the abstract idea on a "wholly generic computer" is not sufficient as an additional feature to provide "practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself." *Alice*, 134 S. Ct. at 2358 (internal quotation marks and citations omitted).

Here, we conclude Appellants' claim 1 is distinguishable from the type of claim considered by the court in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), because Appellants' claim 1 is not "directed to an improvement in the functioning of a computer," as was found by the court regarding the subject claim in *Enfish*, 822 F.3d at 1338.

The Examiner finds, and we agree:

> Claims 1-6 and 12-17 are directed to an abstract idea of providing healthcare through patient assessment and processing information. Providing healthcare through patient assessment is an abstract idea because it involves certain methods of organizing human activities and is a fundamental economic practice (see, for example, claim 1's recitation of generating and sending a message including a reminder for the patient to travel with a supply of the at least one prescription medication, etc.). Processing information is an abstract idea because it uses categories to organize, store, and transmit information, etc.; collects and compares known information; and/or obtains and compares intangible data, etc. (see, for example, claim 1's recitation of identifying location information for the patient, identifying at least one prescription medication associated with the patient, etc. Moreover, it is submitted that that the step of generating and sending the message is an abstract idea because it requires comparing data and the use of an algorithm and/or mathematical relationship to determine if the patient's location of travel will exceed a predetermined distance from a home address, etc.).

Ans. 4.

Thus, we conclude claim 1 is directed to an abstract idea because the claimed method uses mathematical relationships to manipulate data (e.g., determining whether patient's location of travel exceeds a predetermined distance from a home address) to generate additional information (e.g., generate a message for the patient). *See Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1350–51 (Fed. Cir. 2014) (holding that "a process of organizing information through mathematical correlations . . . not tied to a specific structure or machine" is an abstract idea). *See also Enfish*, 822 F.3d at 1335 (fundamental economic and conventional business practices are often found to be abstract ideas, even if performed on a

computer). *See, e.g.*, *OIP Techs., Inc. v. Amazon.com Inc.*, 788 F.3d 1359 1362–63 (Fed. Cir. 2015).

For at least these reasons, we conclude representative claim 1 is directed to an abstract idea. (*Alice* — Step One.)

Alice — **Step Two**

Proceeding to step two of the *Alice* test articulated by the Supreme Court, we further "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." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78).

Regarding step two of the *Alice* analysis, Appellants contend, *inter alia*:

> In the case of claim 1, the claimed medical assessment method is directed to improving or solving a problem in the field of patient assessment methods using computerized systems that incorporate the processor of claim 1 and may include other technological devices such as the telehealth terminal that is recited in claim 6. The claim limitations directed to analysis of patient social network data to identify travel locations and transmission of reminder messages for traveling with prescription medications when the travel destinations are farther than a predetermined distance from the patient's home address are directed to improved methods for patient assessment rooted in computerized systems that are separate from the traditional healthcare process where patients interact with other humans instead of with a computerized system. Thus, the reasoning from DDR Holdings is directly applicable to the limitations of claim 1 to support a finding that claim 1 includes limitations that add significantly more to an abstract idea.

App. Br. 13.

The Examiner finds:

> In the instant application, it is respectfully submitted that the alleged improvements of appellant's claims pertain to the abstract idea itself (e.g., providing healthcare through patient assessment and processing information), rather than improvements to the technology (e.g., improved functioning of the processor). More specifically, it is submitted that appellant's invention does not solve a technological problem using a technical solution. For example, appellant's claims merely recite a processor which is a notoriously well-known prior art technology that perform well-known functions, such as, receiving data, identifying information, generating messages, sending messages, and the like.

Ans. 5.

Here, we conclude the *nature* of claims 1–6 and 12–17 is not *transformed* into a patent-eligible application of the abstract idea presented, because these claims do nothing more than simply instruct the practitioner to implement an abstract idea using a generic computer.

In *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014), the subject claim was held patent-eligible because it encompassed "an inventive concept" for resolving a "particular Internet-centric problem." In contrast, we find Appellants' "providing healthcare through patient assessment and processing information" does not provide a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR*, 773 F.3d at 1257.

Because we find all claims on appeal merely use a generic computer or processor as a **tool** which is used in the way a computer normally functions, we conclude claims 1–6 and 12–17 fail to impart any discernible improvement upon the computer or processor, nor do Appellants' claims

solve "a challenge particular to the Internet" as considered by the court in *DDR*, 773 F.3d at 1256–57.

Thus, we conclude none of Appellants' claims are like the claim held patent-eligible by the court in *DDR*, in which the claimed invention was directed to the "challenge of retaining control over the attention of the customer in the context of the Internet," such that:

> Instead of the computer network operating in its normal, expected manner by sending the website visitor to the third-party website that appears to be connected with the clicked advertisement, the claimed system generates and directs the visitor to the above-described hybrid web page that presents product information from the third-party and visual "look and feel" elements from the host website.

DDR, 773 F.3d at 1258–59.

Regarding step two of the *Alice* test, we find nothing in claims 1–6 and 12–17 that adds anything "significantly more" to transform the abstract concept of collecting, storing, and analyzing information into a patent-eligible application. *See Alice*, 134 S. Ct. at 2357. Appellants do not argue that each of the steps or functions recited in claims 1–6 and 12–17 is individually inventive. None of Appellants' arguments persuasively show that some **inventive concept** arises from the **ordered combination** of these steps or functions, which, even if true, would be unpersuasive given that we conclude Appellants' claims are directed to ordinary steps (or functions) in data analysis, and are recited in the ordinary order, i.e., following a general pattern of collecting, analyzing, and communicating the results of the analyzed information.

We conclude Appellants' representative claim 1 is directed to a patent-ineligible abstract concept, and does not recite something

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"significantly more" under the second step of the *Alice* analysis. Accordingly, for the reasons discussed above, we sustain the Examiner's rejection under 35 U.S.C. § 101 of representative claim 1, and grouped claims 2–6 and 12–17, as being directed to patent-ineligible subject matter in light of *Alice* and its progeny. *See Grouping of Claims, supra.*

DECISION

We affirm the Examiner's rejection of claims 1–6 and 12–17 under 35 U.S.C. § 101.

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