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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALAN M. PORTNOY and DEBORAH SAEGER

Appeal 2016-006447
Application 12/165,736
Technology Center 3600

Before MAHSHID D. SAADAT, LINZY T. McCARTNEY, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McCARTNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims
1–18. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

The present patent application “concerns a task management system for informing a clinician of medication administration related tasks to be performed by automatically adding data indicating post-administration tasks to be performed to a task list of a clinician.” Specification 1:8–11, filed July 1, 2008 (“Spec.”). Claims 1, 12, 16, and 18 are independent. Claim 1 illustrates the claimed subject matter:

1. A task management system for informing a clinician of medication administration related tasks to be performed, comprising:

a repository of information associating data identifying a plurality of different medications with a corresponding plurality of post-administration alert messages, an individual alert message being for notifying a clinician of a particular post-administration task to be performed concerning a particular medication following administration of said particular medication to a patient;

a pharmacy information system including a configuration processor device enabling a pharmacist to initiate incorporating data in said repository associating a post-administration alert message with a particular medication as well as with times for a post-administration alert message to be generated and provided to a clinician and enabling a pharmacist to dynamically associate a post-administration alert message that is not in a medication database with a particular medication and configure presentation of said post-administration alert message on a mobile point-of-care medication administration system;

an input processor device for receiving data indicating said particular medication has been administered to said patient;

a workflow processor device for processing data to determine tasks to add to or remove from a task list or to modify tasks incorporated on, or for incorporation on, a task list and for, in response to received data indicating said particular medication has been administered to said patient, using information in said

repository to identify a post-administration task associated with said particular medication and automatically adding data indicating an identified post-administration task to be performed to a task list of a clinician; and

a reproduction device for presenting said identified post-administration task and task list of said clinician and a post-administration alert message to said clinician for viewing by a user.

Appeal Brief 18–19, filed October 13, 2015 (“Br.”).

REJECTION

Claims 1–18 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

ANALYSIS

Appellants contend the Examiner failed to establish a prima facie case of unpatentability under 35 U.S.C. § 101. Br. 8–16. According to Appellants, the Examiner “merely stated, in a conclusory fashion, that the claims are directed to the abstract idea of ‘task management’” and failed to address the elements recited in dependent claims 2–11, 13–15, and 17. Br. 9–10. Appellants argue the claims “are not directed to the abstract idea of ‘task management’ on their face” and are distinguishable from the claims the Federal Circuit concluded were patent-ineligible in *SmartGene, Inc. v. Advanced Biological Labs., SA*. Br. 11–13. Finally, Appellants contend that even if the claims were directed to the abstract idea of task management, the claims would still be patent eligible because the claims amount to “significantly more” than an abstract idea and do not preempt “the use of basic tools of scientific and technological work.” Br. 14–16.

We disagree. Section 101 of the Patent Act provides “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. The Supreme Court has long held that this provision contains an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. 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 (2013)). The Court has set forth a two-part inquiry to determine whether this exception applies. First, we must “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Alice*, 134 S. Ct. at 2355. Second, if the claim is directed to one of those patent-ineligible concepts, we 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 Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1297 (2012)). Put differently, we must search the claims for an “inventive concept,” that is, “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 (quoting *Mayo*, 132 S. Ct. 1294).

We first consider whether the Examiner properly concluded the claims are directed to an abstract idea. The Examiner concluded that independent claims 1, 12, 16, and 18 are “directed to the abstract idea of task management, which is similar to the concept of comparing new and stored

information and using rules to identify options.” Non-Final Office Action 2, mailed May 12, 2015 (“Non-Final Act.”). *See also* Answer 3–4, mailed April 8, 2016 (“Ans.”) (explaining the claims “are directed to associating data, incorporating data, receiving data, processing data, presenting data, which is similar to the abstract idea of using categories to organize, store, and transmit information, and comparing new and stored information and using rules to identify options”). Contrary to Appellants’ arguments, the Examiner expressly addressed the dependent claims in the Answer. The Examiner concluded “[t]he abstract ideas for [dependent] claims 2–11, 13, 15, and 17 are similar, but further describe aspects of alert message, receiving data, associating data, accessing data, [and] modifying data, and are, therefore directed to an abstract idea for similar reasons.” Ans. 4.

Appellants have not persuaded us the Examiner erred. The Federal Circuit has described the abstract-idea inquiry “as looking at the ‘focus’ of the claims, their ‘character as a whole’” to determine if the claims are directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). The plain language of the claims at issue indicate their focus is notifying clinicians about tasks related to administered medications, or in the Examiner’s words, “task management.” For example, claim 1 recites “a task management system for informing a clinician of medication administration related tasks to be performed.” App. Br. 18. The claimed system includes components that (1) incorporate data, (2) associate medications with post-administration alert messages and alert message generation times, (2) configure alert message presentation, (3) receive data indicating a patient has received a particular medication, (4) identify a post-administration task associated with the medication and adding the task to a

task list, and (5) presenting the task, task list, and associated alert message to a clinician. *See* App. Br. 4 (describing the invention recited in claim 1), 18 (claim 1). The claim does not focus on “an improvement in computer as tools” but rather on an “abstract idea[] that use[s] computers as tools.” *Elec. Power Grp.*, 830 F.3d at 1354. Independent claims 12, 16, and 18 recite similar limitations. *See* App. Br. 21–22, 23–26. Dependent claims 2–11, 13–15, and 17 recite various additional “interfaces” and “processors” and extensions of existing components that do nothing to edge the abstract idea recited in the independent claims closer to patent eligible subject matter.

The Federal Circuit has concluded similar claims are directed to abstract ideas. For example, in *SmartGene, Inc. v. Advanced Biological Laboratories, SA*, the Federal Circuit concluded that claims reciting methods and systems of selecting a therapeutic treatment regimen for a patient with a known disease were directed to an abstract idea. *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x 950 (Fed. Cir. Jan. 24, 2014) (nonprecedential). The court concluded the claims at issue were abstract because the claims did “no more than call on a ‘computing device,’ with basic functionality for comparing stored and input data rules, to do what doctors do routinely” *SmartGene*, 555 F. App’x at 954. The court explained that “every [claimed] step is a familiar part of the conscious process that doctors can and do perform in their heads.” *SmartGene*, 555 F. App’x at 955.

That reasoning applies here. The claimed system uses various computer components to do what clinicians ordinarily do using pen and paper—remind themselves about tasks related to administered medications. *See, e.g.*, Spec. 3:1–6 (explaining that the disclosed invention “reduces the

need for a clinician to handwrite message reminders that may be lost or inadvertently ignored”). Because clinicians perform the functions recited in the claims using pen and paper, the claims at issue, like the claims in *SmartGene*, “do no more than call on a ‘computing device’ . . . to do what doctors do routinely.” *SmartGene*, 555 F. App’x at 954.

Appellants argue *SmartGene* is distinguishable because the claims at issue “perform[] a process that cannot be completed by the human mind alone.” Br. 12 (emphasis added). According to Appellants, “[o]ne person could not keep track of a multitude of alert messages for various medications and remember[ing] to perform a post-administration task at a particular time.” Br. 13. But the claims do not require “keep[ing] track of a multitude of alert messages for various medications” as asserted by Appellants. Even if the claims did, the fact that a clinician might need pen and paper or conventional computer components to perform the recited functions does not mean the claims are directed to patent-eligible subject matter. As the *SmartGene* court noted

section 101 covers neither “mental processes”—associated with or as part of a category of “abstract ideas”—nor processes that merely invoke a computer and its basic functionality for implementing such mental processes, without specifying even arguably new physical components or specifying processes defined other than by the mentally performable steps.

SmartGene, 555 F. App’x at 954; see also *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370–72 (Fed. Cir. 2011) (concluding a claim whose “steps can be performed in the human mind, or by a human using a pen and paper” was directed to an abstract idea).

Other Federal Circuit decisions also indicate these claims are directed to an abstract idea. In *Electric Power Group, LLC v. Alstom S.A.*, the

Federal Circuit concluded claims that essentially recited “collecting information, analyzing it, and displaying certain results of the collection and analysis” were directed to an abstract idea. *Elec. Power Grp.*, 830 F.3d at 1353–54. The claims before us similarly recite collecting data (the “receiving” and “incorporating” steps), processing it (the “associating,” “processing,” and “adding” steps), and displaying the results of the collection and analysis (the “configure presentation” and “presenting” steps). And in *FairWarning IP, LLC v. Iatric Sys., Inc.*, the Federal Circuit concluded that analogous notification claims that recited collecting and analyzing information to detect misuse and notifying a user when misuse is detected were directed to an abstract idea. *FairWarning IP, LLC v. Iatric Sys., Inc.* 839 F.3d 1089, 1093–94 (Fed. Cir. 2016).

The disputed claims are not meaningfully different from the claims considered in *SmartGene*, *Electric Power Group*, and *FairWarning IP*. This is sufficient to establish the disputed claims are directed an abstract idea. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (explaining that when determining whether claims are directed to an abstract idea, “both this court and the Supreme Court have found it sufficient to compare [the] claims at issue to those claims already found to be directed to an abstract idea in previous cases”); *see also Amdocs (Israel) Limited vs. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (explaining that the “decisional mechanism courts now apply” for deciding if claims are directed to an abstract idea “is to examine earlier cases in which a similar or parallel descriptive nature can be seen”).

Because we agree with the Examiner that the claims are directed to an abstract idea, we next consider whether the Examiner correctly concluded

the claims do not include an inventive concept. The Examiner concluded the claims do not recite elements that amount to “significantly more” than an abstract idea because the recited elements are “generic computing components” that perform “generic computer functions . . . that are well-understood, routine, and conventional activities previously known to the industry.” Non-Final Act. 2; *see also* Ans. 4–5 (citing Spec. ¶¶ 12, 16, 18; Fig. 1).

Appellants have not persuaded us the Examiner erred. We see nothing in the elements of these claims, considered “both individually and ‘as an ordered combination’” that ‘transform[s] the nature of the claim[s]’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1289). Appellants contend the claims include “elements or computer functions that are not well-understood, routine and conventional in the field, as evidenced the absence of prior-art-based rejections” such as “a pharmacy information system” and “a workflow processor,” among others. App. Br. 14. But the claims recite these elements and functions “in general terms, without limiting them to technical means for performing the functions that are arguably an advance over conventional computer and network technology.” *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (quoting *Elec. Power Grp.*, 830 F.3d at 1351). Appellants’ written description describes the recited elements and functions in a similar fashion. *See, e.g.*, Spec. 5:6–7 (“A workflow processor, as used herein, processes data to determine tasks to add or remove from a task list or modifies tasks incorporate on, or for incorporation on, a task list.”) 6:4–6 (“Pharmacy Information system 41 enables a user to configure Reminder messages to be associated with a particular drug or drugs . . .”). In fact,

Appellants' written description indicates that some of these elements and functions were known to those of ordinary skill in the art. *Compare* Spec. 1:21–25 (explaining that messages entered in “known systems” “appear on a BPOC (Bar-coding Point of Care) system as medication”), *with* Br. 23 (claim 12 reciting “a bar code point of care system”).

As found by the Examiner, the claims recite generic computing devices that perform generic computing functions. *See* Ans. 4–7. An inventive concept “requires more than simply stating an abstract idea while adding the words ‘apply it’ or ‘apply it with a computer.’” *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1332 (Fed. Cir. 2015) (quoting *Alice*, 134 S. Ct. at 2358). And “the prohibition on patenting an ineligible concept cannot be circumvented by limiting the use of an ineligible concept to a particular technological environment.” *Versata*, 793 F.3d at 1332.

Appellants also argue that the claims do not risk preempting an abstract idea itself. Even assuming this is true, the fact that the claim does not preempt a particular abstract idea does not make the claim patent eligible. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 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.”).

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DECISION

We affirm the Examiner's rejection of claims 1–18 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)(iv).

AFFIRMED