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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RANDY KIDD and JOHN J. BRADY

Appeal 2016-006801
Application 13/335,162¹
Technology Center 3600

Before ST. JOHN COURTENAY III, JAMES R. HUGHES, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–11, which are all the claims pending in this application. Claims 12–19 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is Stratice Healthcare, LLC. Br. 1.

STATEMENT OF THE CASE

Introduction

Appellants' application relates to an electronic ordering system for medical equipment and other durable goods for patients. Spec. ¶ 2. Claim 1 is illustrative of the appealed subject matter and reads as follows:

1. A computer implemented method of providing patients' medical equipment, supplies or services, comprising:

receiving data elements from an electronic healthcare system the data elements including patient data elements, health care provider data elements, order data elements, and insurance and billing data elements, wherein the patient data elements collected from the electronic healthcare system are from one of a patient or a patient's healthcare provider after electing to provide the patient data elements, health care provider identifies the medical equipment, supplies or services to be provided to the patient, and wherein the order data elements include International Classification of Diseases (ICD) codes, Healthcare Common Procedure Coding System (HCPC) codes, Certificates of Medical Necessity (CMN) fields, a healthcare provider's documented notes, and documented plan of care or needs assessment evaluation as required face to face (F2F) documentation for Medicare Beneficiaries;

validating a portion of the data elements through one of schema validation and database logic to determine if an order can be fulfilled through a third party supplier;

creating an order from the data elements;

executing a third party supplier selection routine to select a third party supplier of medical equipment, supplies or services based on a patient's geographic location, patient's health insurance or payor information, a patient's specific medical equipment, supply or service prescribed, and third party suppliers' quality score, the executing validating the third party supplier has an acceptable quality score;

executing including an option to select the third party supplier, when multiple third party suppliers are available in the

system for selection, based upon a healthcare provider's preference and a third party supplier score; wherein the third party supplier of medical equipment, supplies or services provides the medical equipment, supplies or services to the patient, and wherein each third party supplier has an executed service level agreement stored;

obtaining payment from the third party supplier for transmitting the order for the medical equipment, supplies or services;

the order to the third party supplier of medical equipment, supplies or services that is chosen by the third party selection routine; and

updating a status of the order, the updating triggering recalculation of the third party supplier's score, wherein each method operation is performed by a processor.

The Examiner's Rejections

Claims 1–11 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 2.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' contentions that the Examiner has erred. We disagree with Appellants' contentions. Except as noted below, we adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusions reached by the Examiner. We highlight the following additional points.

The Supreme Court in *Alice* identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101. Assuming that a claim nominally falls within

one of the statutory categories of machine, manufacture, process, or composition of matter, the first step in the analysis is to determine if the claim is directed to a law of nature, a natural phenomenon, or an abstract idea (judicial exceptions). *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S.Ct. 2347, 2355 (2014). If so, the second step is to determine whether any element or combination of elements in the claim is sufficient to transform the nature of the claim into a patent eligible application, that is, to ensure that the claim amounts to significantly more than the judicial exception. *Id.*

Regarding *Alice* step one, Appellants argue the Examiner's rejection is in error because it lacks proper reliance on factual findings. Br. 4–5. We disagree. Consideration of evidence in making a determination under the first step of the *Alice* framework has merit. *See, Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229 (Fed. Cir. 2016). But there is no requirement that examiners must provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. *See, e.g.*, para. IV “July 2015 Update: Subject Matter Eligibility” to 2014 Interim Guidance on Subject Matter Eligibility (2014 IEG), 79 Fed. Reg. 74618 (Dec. 16, 2014) (“The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be a *question of law*. Accordingly, courts do not rely on evidence that a claimed concept is a judicial exception, and in most cases resolve the ultimate legal conclusion on eligibility without making any factual findings.”) (emphasis added). Evidence may be helpful in certain situations where, for instance, facts are in dispute, but it is not always necessary. It is not necessary in this case.

Claim 1 recites a “computer implemented method of providing patients’ medical equipment, supplies or services” comprising seven steps, including receiving data elements, validating data elements, creating an order from data elements, selecting a third party supplier, obtaining payment, and updating the order status. These functions amount to nothing more than standard business practices implemented on a general purpose computer. We conclude none of Appellants’ claims is “directed to an improvement in the functioning of a computer,” as was found by the court regarding the subject claim in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1338 (Fed. Cir. 2016). To the extent that the recited steps or acts may be performed faster or more efficiently using a computer, our reviewing court provides applicable guidance:

While the claimed system and method certainly purport to accelerate the process of analyzing audit log data, *the speed increase comes from the capabilities of a general-purpose computer, rather than the patented method itself. See Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed *more efficiently* via a computer does not materially alter the patent eligibility of the claimed subject matter.”).

FairWarning IP, LLC v. Iatric Sys., Inc., 839 F.3d 1089, 1095 (Fed. Cir. 2016) (emphasis added). Moreover, to the extent that Appellants’ claims collect information, analyze it in some fashion, and present or communicate the result, the court in *Electric Power* guides: “we have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.” *Elec. Power Grp. LLC v. Alstom*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (internal citations omitted).

Applying this reasoning to Appellants' claims on appeal, we similarly find any purported faster or more efficient performance of the claimed steps or acts merely comes from the capabilities of a general-purpose computer and/or computer related elements, rather than from Appellants' claimed steps or functions.

There is no definitive rule to determine what constitutes an "abstract idea." Rather, the Federal Circuit has explained that "both [it] and the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d at 1334; *see also Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (explaining that, in determining whether claims are patent-eligible under § 101, "the decisional mechanism courts now apply 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"). The Federal Circuit also noted that "examiners are to continue to determine if the claim recites (i.e., sets forth or describes) a concept that is similar to concepts previously found abstract by the courts." *Amdocs*, 841 F.3d at 1294 n.2 (citation omitted). The Examiner has compared claim 1 to prior cases (*see* Ans. 3) and properly concluded claim 1 is directed to an abstract idea for the reasons set forth above.

Regarding *Alice* step two, Appellants argue the Examiner erred in finding the claims involve routine, conventional activities that are well known in the healthcare industry. Br. 5–7. In particular, Appellants argue the Examiner concedes the closest prior art does not anticipate or render

obvious all limitations of claim 1 and, therefore, claim 1 does not involve well-known, conventional activities. Br. 6 (citing Final Act. 3).

Appellants have not persuaded us of Examiner error. Appellants' claims are directed to a "method of providing patients' medical equipment, supplies or services." "The 'novelty' of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter." *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981). "It is true that 'the § 101 patent-eligibility inquiry and, say, the § 102 novelty inquiry might sometimes overlap.' *Mayo*, 132 S.Ct. at 1304. But, a claim for a *new* abstract idea is still an abstract idea. The search for a § 101 inventive concept is thus distinct from demonstrating § 102 novelty." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016).

Appellants have not set forth any persuasive argument or evidence that method claims 1–11 involve anything more than steps executed using conventional generic computer components. (*See* App. Br. 4–8). Therefore, after reviewing the record, we find Appellants' claimed invocation of a "computer-implemented method" (claim 1) is insufficient to pass as an inventive set of components. As such, our review of the claims, fully considering each claim's elements (both individually and as an ordered combination), fails to show that the nature of any of Appellants' claims is transformed into patent-eligible subject matter. Accordingly, we are not persuaded the Examiner erred in finding the claims lack an "inventive concept."

Finally, Appellants argue the Examiner erred because the claims do not risk preemption because they recite additional, distinguishing elements whereby a computer performs activities that are not routine, not conventional, and not well understood in the healthcare industry. Br. 7. Appellants have not persuaded us of Examiner error because lack of preemption does not make the claims any less abstract. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (collecting cases); *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013); *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”).

For these reasons, we are not persuaded the Examiner erred in rejecting claim 1 as directed to patent-ineligible subject matter. We, therefore, sustain the rejection of claim 1. We also sustain the rejection of claims 2–11, for which Appellants have not offered separate argument. *See* Br. 4–8.

DECISION

We affirm the decision of the Examiner to reject claims 1–11.

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