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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SCHUYLER BUCK, MORRIS J, YOUNG, JASON BUSCH, CHRISTOPHER RICHARD BAKER and SCOTT W. LEAHY[1]

Appeal 2016-006925
Application 11/999,968
Technology Center 3600

Before ROBERT E. NAPPI, TERRENCE W. McMILLIN, and JOYCE CRAIG, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1 through 3, 6 through 18 and 49 through 59. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] Applicant is Roche Diabetes Care Inc.

INVENTION

Appellants' disclosed and claimed invention is directed to a method for setting time blocks of a repeating time period as part of a healthcare management software system. Abstract. Claim 1 is representative of the invention and reproduced below.

1. A method of adjusting durations of time blocks used in a healthcare management software system, the method including the steps of:

   receiving, by the a computing device, a plurality of blood glucose measures for a patient;

   receiving, by the computing device, one input to identify a plurality of time blocks for a repeating time period;

   receiving, by the computing device, one or more duration selections related to a duration for at least one of the time blocks, each of the time blocks having a start time and an end time, and the end time of each of the time blocks generally defining the start time of a subsequent time block;

   displaying, by the computing device, the repeating time period on a graphical display of the computing device, where the repeating time period is represented by a circle with time block dividers emanating from a center of the circle and extending beyond a circumference of the circle, thereby dividing the circle into the plurality of time blocks, such that each time period between two adjacent time block dividers correlate to the duration selected for the corresponding time block;

   adjusting, by the computing device, duration of a given time block in accordance with positions of the time block dividers, where the adjustment occurs in response to user input on the graphical display that changes position of at least one time block divider; and

   analyzing, by the computing device, the plurality of blood glucose measures in accordance with the adjusted time blocks, where the steps of displaying, adjusting and analyzing are implemented by computer executable instructions executed by a computer processor of the computing device.

REJECTION AT ISSUE[2]

The Examiner has rejected claims 1 through 3, 6 through 18 and 49 through 59 under 35 U.S.C. § 101 for being directed to non-statutory subject matter. Final Action 2–3.

ANALYSIS

We have reviewed Appellants' arguments in the Briefs, the Examiner's rejections, and the Examiner's response to Appellants' arguments. Appellants' arguments have not persuaded us of error in the Examiner's determination that the claims recite non-statutory subject matter.

The Supreme Court reiterated the framework set out in *Mayo Collaborative Services, v. Prometheus Labs., Inc.*, 132 S.Ct. 1289 (2012), for "distinguishing patents that claim . . . abstract ideas from those that claim patent-eligible applications of those concepts." *Alice Corp. Pty. Ltd., v. CLS Bank International*, 134 S.Ct. 2347, 2355 (2014). 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). 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.

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[2] Throughout this Decision we refer to the Appeal Brief filed October 29, 2015, Reply Brief filed July 1, 2016, Final Office Action mailed April 29, 2015, and the Examiner's Answer mailed May 2, 2016.

Claim 1

With respect to the first step of the *Alice* analysis Appellants argue that independent claim 1 "addresses the problem of intuitively and accurately adjusting durations of time blocks on a graphical user interface" citing the claim 1 limitation of displaying the repeating time period and that the time blocks are used to analyze blood glucose measures. App Br. 11. Appellants assert this is not a basic concept that is similar to any abstract idea previously identified by the courts. *Id.* As such Appellants assert the Examiner erroneously asserted the claim is directed to an abstract concept. App. Br. 11–12.

The Examiner finds that claim 1 is directed to a series of functions that define the abstract idea of using categories to organize, store and transmit information. Answer 3. Specifically the Examiner finds claim 1 recites steps of receiving data (including duration selection), displaying data, adjusting data (in response to a user input) and analyzing the data in accordance with the adjusted data (adjusted with respect the user input). Answer 3–4.

We concur with the Examiner that independent claim 1 is directed to an abstract concept of using categories to organize, store and transmit information. The Federal Circuit has explained that, in determining whether claims are patent-eligible under Section 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." *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016). The Federal Circuit also noted in that decision 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). Our reviewing court has said that "merely presenting the results of abstract process of collecting and analyzing information without more (such as identifying a particular tool for presentation) is abstract as an ancillary part of such collection and analysis." *Elec. Power Grp., LLC v. Alstrom S.A.* 830 F3d 1350, 1354 (Fed. Cir. 2016). Claim 1 recites receiving data (glucose levels), (identification of time blocks for a period), (duration of time blocks), displaying a representation of (the received time block data), adjusting the data (adjusting the data of the time blocks based upon further inputs) and analyzing the data (glucose levels, based upon the adjusted time blocks). We note that claim 1 does not recite any use or function performed when the blood glucose levels are analyzed based upon the adjusted time block. We consider claim 1 to be directed to an abstract concept of collecting and analyzing data similar to that held to be abstract in *Electric Power Group*. We note that the use of symbols and graphics to represent the data and to input the data is similarly an abstract concept as the use of symbols and graphic interfaces are merely a means to convey data.

With respect to the second step of the *Alice* analysis Appellants argue that independent claim 1 recites how time blocks are displayed and adjusted, which are not conventional activities, and improves upon previously known interfaces. App. Br. 12. As such, Appellants assert the limitations are directed to significantly more than an abstract concept. App. Br. 12–13.

The Examiner finds that claim 1 does not recite significantly more than the abstract concept as the system is merely recites a generic computer which performs the abstract concept. Answer 5 (citing paragraph 50 of

Appellants' Specification as stating that conventional computers can be used to implement the invention).

We concur with the Examiner, and we do not find that the claim recites significantly more than the abstract concept. Appellants' arguments directed to the graphic objects (symbols) used to adjust the time blocks have not persuaded us that the claim recites significantly more than the abstract comment. As discussed above, this is just a method of entering data. Further, as our reviewing court has said, "claims that add the requirement that the system include a 'user interface' for selection of a rule as well as a microprocessor that analyze the audit log data" do not recite significantly more to make claims patent eligible. *Fairwarning IP, LLC v Iatric Systems, Inc.,* 899 F.3d 1089, 1096 (Fed. Cir. 2016). Thus, the use of graphic objects or symbols, part of a user interface, is not sufficient to transform the abstract concept into patentable subject matter. Further, we are not persuaded by Appellants' arguments that rely upon *Enfish v. Microsoft Corp.* 822 F.3d 1327 (Fed Cir 2016). The claims in *Enfish* were directed to a specific improvement to the way the computer operates, not to an improvement to the abstract concept of collecting and analyzing information without more. Accordingly, Appellants have not persuaded us that the claim passes the second part of the *Alice* analysis, and we sustain the Examiner's rejection of independent claim 1 and dependent claims 2, 3, and 6 through 18, grouped with claim 1.

Independent claims 49 and 54

With respect to claim 49, Appellants' arguments identify limitations from claim 49 and assert that "[f]or the same reasons as discussed above

with respect to claim 1, it is respectfully submitted that claim 49 recites patent eligible subject matter." App Br. 13. Appellants make similar statements and assertions with respect to claim 54. App Br. 13–14.

We do not consider these statements to present separate arguments. *See* 37 C.F.R. § 41.37(c)(iv) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."). Even if these statements were considered to be separate arguments they present the same issues as discussed above with respect to claim 1. Accordingly, we similarly sustain the Examiner's 35 U.S.C. § 101 rejection of claims 49 through 59.

DECISION

We affirm the Examiner's rejection of claims 1 through 3, 6 through 18 and 49 through 59.

AFFIRMED