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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WILLIAM H. CORK, BRIAN C. CASE,
JONATHAN PRENDERGAST, and JOHN W. BARRY

Appeal 2016-007895[1]
Application 13/748,580
Technology Center 3600

Before ROBERT E. NAPPI, JOHN P. PINKERTON, and
TERRENCE W. MCMILLIN, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

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[1] Appellants identify Fenwal, Inc. as the real party in interest. App. Br. 1.

STATEMENT OF THE CASE

Introduction

Appellants disclosed and claimed invention relates generally to medical device management using a mobile device. Spec. ¶ 5.[2]

Claim 1 is representative and reproduced below (with the disputed limitations emphasized in italics):

> 1. A computer-implemented method for medical device management using a handheld mobile device, said method comprising:
>
> providing, via a handheld mobile device graphical user interface, a representation of one or more medical devices, the medical devices comprising at least one of a blood processing device, an infusion pump, and a drug delivery device, with a visual indication of a status for each medical device, the representation visually conveying information regarding each of the one or more medical devices and selectable by a user to provide additional information regarding each of the one or more medical devices;
>
> updating the status for each medical device via wireless communication with the handheld mobile device;
>
> receiving an indication of an alarm code at the handheld mobile device, the alarm code representing an alarm or error condition of one or more of the medical devices; and
>
> *providing information at the handheld mobile device to assist a user in handling the alarm or error condition of the one or more of medical devices.*

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[2] Our Decision refers to the Final Action mailed May 18, 2015 ("Final Act."); Appellants' Appeal Brief filed Nov. 17, 2015 ("App. Br.") and Reply Brief filed Aug. 18, 2016 ("Reply Br."); the Examiner's Answer mailed July 27, 2016 ("Ans."); and the original Specification filed Jan. 23, 2013 ("Spec.").

App. Br. 25 (Claims App.).

Rejections on Appeal

Claims 1–20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more.

Claims 1–3, 5–12, and 14–20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Gannin et al. (US 8,291,337 B2; issued Oct. 16, 2012) ("Gannin").

Claims 4 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gannin and Hood et al. (US 6,488,029 B1; issued Dec. 3, 2002) ("Hood").

ANALYSIS

Rejection of claims 1–20 under § 101

Applicable Law

Under 35 U.S.C. § 101, a patent may be obtained "for any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." The Supreme Court has "long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. v. CLS Bank Int'l*, 134 S.Ct. 2347, 2354 (2014) (quoting *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The Supreme Court in *Alice* reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 76–78 (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 in the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts," such as an abstract idea. *Id.* The Court acknowledged in *Mayo* that "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo*, 566 U.S. at 71. Therefore, we look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and otherwise merely recite generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016). If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step, in which the elements of the claims are considered "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 79–78).

Examiner's Findings

The Examiner finds claim 1 is directed to the abstract idea of "using categories to organize, store, and transmit information." Ans. 5. Specifically, the Examiner finds claim 1 provides a representation of one or more medical devices and updates the status for each, receives an indication of an alarm code or error condition of one or more of the medical devices, "where categories of various medical device status (alarm code or error condition) are organized, stored and transmitted (presented remotely on a user mobile device indicating the medical device status)," which is similar to concepts that have been identified as abstract by the courts, such as using

categories to organize, store, and transmit information. *Id.* (citing *Cyberfone Systems, LLC v. CNN Interactive Group, Inc.*, 558 Fed. Appx. 988 (Fed Cir. 2014)). The Examiner also finds that no technological improvements have been provided within the medical field and, although the recited invention may improve the process of providing a representation of medical devices and updating the status for each medical device, receiving an indication of an alarm code or error condition of one or more of the medical devices (i.e. the abstract idea), "there is no evidence to show that it improves the structural or functional properties of the computer itself." Ans. 6. The Examiner also finds the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the computer as recited is a generic computer component that performs generic computer functions that are well-understood, routine, and conventional activities previously known to the industry. *Id.* at 8.

Appellants' Arguments

Appellants argue claim 1 does not organize medical device statuses into categories; instead, "a status is indicated visually and a status is updated." Reply Br. 8; *see also* App. Br. 17. According to Appellants, *Cyberfone* is distinguishable because claim 1 does not recite separating data into different categories. *Id.* Appellants argue claim 1 "does not claim the use of categories to organize, store, and transmit information" and, even if claim 1 were to be categorizing an alarm code or error condition, as stated by the Examiner, claim 1 is not "directed to" that categorization. *Id.* at 9. Instead, Appellants argue:

> Claim 1 is "directed to" providing a visual representation of specific medical devices on a handheld mobile device, including status, selectable by a user to provide additional

> information, updating the status, receiving an indication of an alarm code at the handheld representing an alarm or error condition of the medical device and providing information to assist a user in handling the alarm or error condition. In short, there is nothing "abstract" about this combination of features.

Id. at 9.

Appellants also argue claim 1 provides improvements to the functioning of the handheld computer by addressing the problem of handheld devices having limited display space for providing data:

> Claim 1 addresses this concern by first displaying representations of one or more medical devices and then, if selected by a user, to provide additional information regarding the medical devices, such as time remaining in an infusion, elapsed time in an infusion, name of an operator, etc. [*See*] present [S]pecification, para. [73]. Thus, the handheld computer is able to display more information about a pump with a limited screen size by enabling a user to select a medical device before receiving the additional information (e.g., in another screen).

Id.

Appellants argue, like the claims in *DDR Holdings v. Hotel.com*, 773 F.3d 1248 (Fed. Cir. 2014), claim 1 overcomes a problem specifically arising in the realm of mobile computing devices: displaying a lot of data on a small screen. *Id.* at 9–10.

Alice Step One

We are persuaded by Appellants' arguments that claim 1 is not "directed to" an abstract idea. We agree with Appellants' argument that claim 1 "does not claim the use of categories to organize, store, and transmit information" and that claim 1 is distinguishable from *Cyberfone* because it does not separate data into different categories. Reply Br. 9. We also agree

with Appellants' argument that claim 1 as a whole is not directed to excluded subject matter because it improves the computer-implemented process of medical device management by, as Appellants argue, the specifically recited steps of: (1) providing a visual representation of specific medical devices on a handheld mobile device, including status, selectable by a user to provide additional information; (2) updating the status via communication with the handheld device; (3) receiving an indication of an alarm code at the handheld device representing an alarm or error condition of the medical device; and (4) providing information to assist a user in handling the alarm or error condition. That is, we conclude the focus of claim 1 is on the specific asserted improvement in computer capabilities and functioning of a handheld mobile device for medical device management and not on a process that qualifies as an abstract idea for which computers are invoked merely as a tool. *See Enfish*, 822 F.3d at 1335–36. Because we find claim 1 is not directed to an abstract idea, we do not need to proceed to step two of *Alice*. Thus, for these reasons, we conclude claim 1, as well as claims 2–20, are directed to patent-eligible subject matter under § 101.

Rejection of Claims 1–3, 5–12, and 14–20 under § 102(b)

Claims 1, 5–10, and 14–20

Appellants argue that Gannin fails to disclose providing information "to assist a user in handling the alarm or error condition of the one or more medical devices," as recited in claim 1. App. Br. 4. Although Appellants acknowledge that Gannin discloses generating an alert, Appellants argue "[a]n alert, without more, does not comprise 'information to assist a user in handling an alarm or error condition.'" *Id.* at 4–5 (citing Gannin Fig. 3,

12:26–36; *see also id.* at 5–7). Appellants also argue that Gannin is designed for desktop computer applications and, although Gannin discloses its personal communication devices include "an in-house phone, a pager, and a mobile device" (*see* Gannin 6:7–10), "there is no enabling teaching as to how one of ordinary skill in the art would arrive at a truly *handheld*, mobile device that provides updates, receives an alarm code, and provides information to assist a user in handling the alarm." *Id.* at 7–8.

We are not persuaded by Appellants' arguments. Instead, we agree with the Examiner's finding that Gannin discloses providing information in a dialogue box "to assist in efforts to clearing a mismatched pump channel alarm." Ans. 2 (citing Gannin, Fig. 9, 14:23–36). As the Examiner correctly finds, Gannin discloses the dialogue box "includes an area indicating the currently associated version of the order 915 and latest version of the order 920" and that a user "may select the latest version button to associate the pump channel with the latest version of the order for the patient." *Id.* Thus, we agree with the Examiner that Gannin discloses providing information "to assist a user in handling the alarm or error condition of the one or more medical devices." *Id.*

We also are not persuaded by Appellants' argument there is no enabling teaching in Gannin of "a truly *handheld*, mobile device" with the features of claim 1. Our reviewing court has held that the Examiner may rely on disclosures of United States patents. *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1355 (Fed. Cir. 2003) ("[W]e hold a presumption arises that both the claimed and unclaimed disclosures in a prior art patent are enabled"); *In re Antor Media Corp.*, 689 F.3d 1282, 1289 (Fed. Cir. 2012) ("[W]e . . . hold that . . . an examiner is entitled to reject claims as

anticipated by a prior art publication or patent without conducting an inquiry into whether or not that prior art reference is enabling . . . . the burden shifts to the applicant to submit rebuttal evidence of nonenablement.").

Here, although the burden shifted to Appellants to provide evidence of nonenablement, Appellants failed to provide persuasive evidence or technical reasoning showing that a person of ordinary skill in the art could not take the disclosure of Gannin, in combination with his or her own knowledge of the art, and be in possession of the invention.[3] *See In re Graves*, 69 F.3d 1147, 1152 (Fed. Cir. 1995). Mere attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984).

In the Reply Brief, Appellants argue for the first time that Gannin does not teach or suggest "receiving an indication of an alarm code at the handheld mobile device, the alarm code representing an alarm or error condition of one or more of the medical devices," as recited in claim 1. Reply Br. 1–3. Because this argument is raised by Appellants for the first time in the Reply Brief not in response to a shift in the Examiner's position or without

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[3] "The standard for enablement of a prior art reference for purposes of anticipation under section 102 differs from the enablement standard under 35 U.S.C. § 112." *Novo Nordisk Pharmaceuticals., Inc. v. Bio-Technology General Corp.*, 424 F.3d 1347, 1355 (Fed. Cir. 2005) (citations omitted). "While section 112 'provides that the [S]pecification must enable one skilled in the art to 'use' the invention,[] 'anticipation does not require actual performance of suggestions in a disclosure. Rather, anticipation only requires that those suggestions be enabled to one of skill in the art.'[] 'Whether a prior art reference is enabling is a question of law based upon underlying factual findings.'" *Id.* (citations omitted).

otherwise showing good cause, it is waived. *See* 37 C.F.R. § 41.41(b)(2) (2012); *see also Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) ("[T]he reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not.").

Thus, for these reasons, we agree with the Examiner's findings that Gannin discloses "providing information at the handheld mobile device to assist a user in handling the alarm or error condition of the one or more of medical devices," as recited in claim 1. Accordingly, we sustain the Examiner's rejection of claim 1 under § 102(b). For the same reasons, we also sustain the Examiner's rejection of claims 10 and 18, which recite limitations commensurate to the disputed limitation of claim 1, and dependent claims 5–9, 14–17, 19, and 20, which are not separately argued.

Claims 2 and 11

Claim 2 recites "further comprises facilitating troubleshooting of an alarm at one of the one or more medical devices via at least one of an entered alarm code and a captured image of an alarm condition." App. Br. 25 (Claims App.). In the Final Action, the Examiner relied on Gannin at column 1, line 63–column 2, line 8 and column 5, lines 37–46 as disclosing the limitations of claim 2. Final Act. 7. In the Answer, the Examiner relies on column 14, lines 23–36, and Figure 9, of Gannin as disclosing the "troubleshooting" of claim 2. Appellants argue that "[n]either the 'CURRENTLY ASSOCIATED VERSION' nor the 'LATEST VERSION' [as shown in dialogue box 900 of Figure 9] is an 'entered alarm code' or a 'captured image of an alarm condition.'" Reply Br. 3. Appellants also argue

Gannin merely teaches pressing a button labeled "LATEST VERSION" or a button labeled "CANCEL," but these are not alarm codes. *Id.* at 4.

We are persuaded by Appellants' arguments that the Examiner erred. Thus, we do not sustain the Examiner's rejection of claim 2 under § 102(b). For the same reasons, we also do not sustain the rejection of claim 11, which recites limitations commensurate to claim 2, under § 102(b).

Claims 3 and 12

Claim 3 recites "displaying an inventory of available products for the one or more medical devices at a healthcare facility and facilitating inventory control via the mobile device." App. Br. 25 (Claims App.). The Examiner finds these limitations are disclosed in Gannin because "[i]n relationship to managing infusion pumps as a form of medical device, drug product inventory such as milrinone, norepinephrine and dopamine of milliliters mentioned in column 14, lines 10–22 serve as the inventory of available products." Ans. 3

Appellants argue that the cited portion of Gannin describes Figure 8 and also states "[h]ere there are five infusion pumps and channels connected that have been associated with orders for the patient." Reply Br. 4. Appellants also argue, and we agree, "[s]howing five pumps currently in use is not 'displaying an inventory of available products for the medical devices at a healthcare facility,' nor is it 'facilitating inventory control.'" Reply Br. 5, 6; *see also* App. Br. 10–11.

We are persuaded by Appellants' arguments that the Examiner erred. Thus, we do not sustain the rejection of claim 3 under § 102(b). For the same reasons, we also do not sustain the rejection of claim 12, which recites limitations commensurate with those of claim 3, under § 102(b).

Rejection of Claims 4 and 13 under § 103(a)

Claim 4 recites "providing training to a medical device operator via the mobile device." App. Br. 25, (Claims App.). The Examiner finds the limitations of claim 4 are taught or suggested by the combination of Gannin, which teaches the mobile device, and Hood, which teaches the "*maintenance requirements for the transportable life support system are preferably automated and integrated into the system such that notification of a particular requirement is provided upon the display thereof, as well as instructions for performing such maintenance, if desired.*" Ans. 4 (citing Hood 26:65–27:4). The Examiner also finds the automated instructions of Hood "serve as training to operate a medical device." Ans. 4. The Examiner further finds "Gannin's method and system mobile device is combine[d] with Hood's provided medical device training to provide a faster way to troubleshoot infusion pump problems while treating patients." *Id.*

Appellants argue Hood is directed to a self-contained, transportable life support system, and the display containing the maintenance requirements and instructions "is the display of the transportable life support system," which "does not teach providing training via the mobile device." App. Br. 12; *see also* Reply Br. 7. Appellants also argue Hood teaches away from combining its teachings with Gannin because "Hood criticizes care systems which 'require skilled operators having extensive training.'" App. Br. 12–13 (citing Hood 26:65–27:4); *see also* Reply Br. 7 (arguing "Hood teaches away from requiring extensive training to use its life support system" and, therefore, one of ordinary skill would not look to Hood for solutions to providing training via a handheld device).

We are not persuaded by Appellants' arguments. First, we are not persuaded by Appellants' argument that Hood's display "does not teach providing training via the mobile device" because the rejection is based on the combined teachings of Gannin and Hood and the Examiner relies on Gannin as teaching the "mobile device." App. Br. 12. Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references. *In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). The relevant inquiry is whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the combined teachings of the references. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Second, we are not persuaded by Appellants' argument that Hood "teaches away" from being combined with Gannin. Hood teaches it is desirable to "minimize" the amount of skill and training required for medics and medical care givers in battlefield situations. *See* Hood 4:67–5:3. Hood, therefore, does not criticize or discredit all training, including "training to a medical device operator," as recited in claim 4. Claim 4 does not recite "extensive" training. Hood also states, "it is desirable to provide a mobile intensive care system which requires minimal skill and training for such battlefield applications." *See* Hood 5:5–7. Hood accomplishes this goal by providing maintenance instructions, i.e., training information, on the display of the life support system itself. *See* Hood 26:65–27:4. Thus, contrary to Appellants' argument, we find that Hood's teachings of providing an intensive care system with an integrated display with maintenance instructions for the system are entirely consistent with claim 4's feature of

providing training to a medical device operator of one of the medical devices recited in claim 1.

Accordingly, we agree with the Examiner's (1) findings that the combined teachings of Gannin and Hood teach or suggest the limitations of claim 4 and (2) conclusion that the combination of references renders claim 4 unpatentable under § 103(a). Thus, we sustain the Examiner's rejection of claim 4. For the same reasons, we sustain the Examiner's rejection of claim 13, which recites limitations commensurate to those of claim 4, under § 103(a).

DECISION

We reverse the Examiner's rejection of claims 1–20 under 35 U.S.C. § 101.

We affirm the Examiner's rejection of claims 1, 5–10, and 14–20 under 35 U.S.C. § 102(b).

We reverse the Examiner's rejection of claims 2, 3, 11, and 12 under 35 U.S.C. § 102(b).

We affirm the Examiner's rejection of claims 4 and 13 under 35 U.S.C. § 103(a).

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-IN-PART