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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAVINDRAN KRISHNAN,
PRAKASH PADMALWAR, and PAULA RESETCO

Appeal 2016-008173¹
Application 12/540,242
Technology Center 3600

Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1–4 and 6–46. We have jurisdiction to review the case under 35 U.S.C. §§ 134(a) and 6(b).

The invention relates generally to “high throughput optimized information and media object management normalization, mapping, and

¹ The Appellants identify Mach 7 Technologies as the real party in interest. Appeal Br. 2.

routing across incompatible information technology infrastructures.”

Spec. ¶ 2.

Claim 21 is illustrative:

21. A method of operating a system for providing a media object from a sending system to a receiving system, comprising:

- a. providing a sending system and a receiving system, wherein said sending system provides media objects in a first format and wherein said receiving system is compatible with media objects in a second format, wherein said receiving system is incompatible with media objects in said first format;
- b. providing a processor connected to said sending system and to said receiving system;
- c. transmitting a media object from said sending system to said processor, wherein said media object has said first format corresponding to said sending system;
- d. providing a data base having at least one rule for changing format of media objects, wherein said at least one rule for changing format provides for at least one from the group consisting of changing a plurality of sending system formats to a receiving system format, changing a sending system format to a plurality of receiving system formats, changing a plurality of sending system formats to a plurality of receiving system formats, and changing a sending system format to a receiving system format;
- e. providing said at least one rule from said data base to said processor;
- f. on the fly changing format of said media object from said first format to said second format based on said at least one rule;
- g. providing a data base having a plurality of predetermined routing parameters and providing at least one of said predetermined routing parameters to said processor; and
- h. transmitting said on the fly format-changed media object in said second format to the receiving system, wherein

said transmitting said format-changed media object is according to at least one of said predetermined routing parameters.

The Examiner rejected claims 1–4 and 6–46 under 35 U.S.C. § 101 as reciting ineligible subject matter in the form of an abstract idea.

The Examiner rejected claims 1–4 and 6–46 under 35 U.S.C. § 103(a) as unpatentable over Cooke et al. (US 6,574,629 B1, iss. June 3, 2003) and Pulkkinen et al. (US 2004/0143458 A1, pub. July 22, 2004).

We AFFIRM, and enter a NEW GROUND of rejection pursuant to 37 C.F.R. § 41.50(b).

ANALYSIS

Rejection 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.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In determining whether a claim falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 76–77 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in

petitioners' application explain the basic concept of hedging, or protecting against risk."); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) ("Analyzing respondents' claims according to the above statements from our cases, we think that a physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter."); *Parker v. Flook*, 437 U.S. 584, 594–595 (1978) ("Respondent's application simply provides a new and presumably better method for calculating alarm limit values."); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972) ("They claimed a method for converting binary-coded decimal (BCD) numerals into pure binary numerals.").

The following method is then used to determine whether what the claim is "directed to" is an abstract idea:

[T]he 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. *See, e.g., Elec. Power Grp.*, 830 F.3d at 1353–54. That is the classic common law methodology for creating law when a single governing definitional context is not available. *See generally* Karl N. Llewellyn, *The Common Law Tradition: Deciding Appeals* (1960). This more flexible approach is also the approach employed by the Supreme Court. *See Alice*, 134 S. Ct. at 2355–57. We shall follow that approach here.

Amdocs (Israel) Limited v. Openet Telecom, Inc., 841 F.3d 1288, 1294 (Fed. Cir. 2016).

The patent-ineligible end of the spectrum includes fundamental economic practices, *Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611; mathematical formulas, *Flook*, 437 U.S. at 594–95; and basic tools of scientific and technological work, *Benson*, 409 U.S. at 69. On the patent-eligible side of the spectrum are physical and chemical processes, such as

curing rubber, *Diamond*, 450 U.S. at 184 n.7, “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores,” and a process for manufacturing flour, *Gottschalk*, 409 U.S. at 67.

If the claim is “directed to” a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2355. This is a search for an “inventive concept”—an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.*

Independent claim 21 recites the providing of sending and receiving systems and a processor, the storage of format and routing rules in a “data base,” and the transmitting, receiving, and “changing format” of media objects. Media objects are described as data files that contain from among “text, image, audio, video, and audiovisual” content. Spec. ¶ 4; *see also* ¶ 33 (“text-based and image-based data files and/or optically character recognized (OCR) data”).

Independent claim 21 is, therefore, directed to receiving, reformatting, and transmitting data according to reformatting and routing rules. This is similar to claims held to be directed to ineligible subject matter by a District Court, a decision which was then affirmed by the Court of Appeals for the Federal Circuit.

Specifically, in *Novo Transforma Techs., LLC v. Sprint Spectrum L.P.*, No. CV 14-612-RGA, 2015 WL 5156526, at *3 (D. Del. Sept. 2, 2015), *aff'd*, 669 F. Appx. 555 (Fed. Cir. 2016), the District Court considered an independent claim, similar to Appellants’ independent

claim 21, which converted and delivered content. That independent claim considered by the District Court is set forth below:

23. A payload delivery method for providing guaranteed end-to-end delivery of a payload from a sender to a recipient, said payload being delivered via one or more communication networks, comprising the steps of:

generating a payload in a first media;

defining payload delivery parameters by said sender;

converting said payload to an alternative media at different locations as necessary for completion of delivery of said payload; and

automatically [notifying] said sender upon receipt of said payload by said recipient.

Id. The District Court explained why this independent claims is directed to an abstract idea, as follows:

Incompatible communication types have existed since before the emergence of computers and the Internet. Translators have been used for centuries to facilitate communication between individuals who speak different languages. The translator receives a message in one language, translates it into another, and delivers the translated message. Here, the claims require a computer system that receives a payload in one media form, translates it into a different media form, and delivers the translated payload. This is no different than the function of a translator.

Id.

We find that the “changing format” of the instant claims is substantively similar to the “converting” in *Novo Transforma* determined to be a patent ineligible abstract idea. Therefore, like the claims in *Novo Transforma*, which performs conversion on the fly (“as necessary for completion of delivery”), we find independent claim 21 is directed to an abstract idea.

Turning to the second step in the *Alice/Mayo* analysis, we look for an inventive concept that may transform the subject matter of independent claim 21 into eligible subject matter. In short, we do not find any.

More specifically, independent claim 21 recites providing sending and receiving systems, each with a “processor.” The Specification describes that the overall system, “the dynamic media object management system 100,” may be implemented on a “general purpose computer.” Spec. ¶ 68; *see also* ¶ 69 (“Such other types of workstations and peripherals may also include remote data centers 145 and vendor neutral and/or vendor independent archival data centers 150, servers 150, server clusters and farms 150, and the like.”). The technology recited, therefore, is general purpose, and does not represent an inventive concept.

Independent claim 21 also recites storing a rule and routing information, and using the rule for the “changing format,” and the routing information for transmitting the changed object. By all appearances, these are functions that are within the scope of operations of general purpose computers, which store and transmit data, and apply rules and routing information for basic operations.

Looking at independent claim 21 as a whole, we do not find an inventive concept that transforms the abstract idea to which the claim is directed into patent-eligible subject matter. Therefore, we sustain the rejection of claim 21 under 35 U.S.C. § 101. We also sustain the rejection of claims 22–46 that depend, directly or indirectly, from claim 21, and which were not argued separately.

Independent claims 1, 10, and 11 recite systems. We find, however, no meaningful distinction between the abstract idea to which independent

claim 21 is directed, and the systems recited in independent claims 1, 10, and 11; the independent claims all are directed to the same underlying invention. The Appellants indicate independent claims 1, 10, and 11 include everything recited in independent claim 21, but “with the difference that three more hardware and software elements are included.” Appeal Br. 23. The three “hardware and software elements” recited in independent claims 1 and 10 are the “management console (MC), the user interactive subsystems controller (UISC), and the modality services subsystem (MSS)”, and for independent claim 11, instead of the MSS “the image services subsystem (ISS).” *Id.* The Specification describes that each of the MC and USIC “may also preferably be configured as an integral part of, and/or as a local or remote and distributed computing resource 170 of the dynamic media object management system 100.” *Id.* ¶ 70–71. Further, the Specification describes that

the system 100 also preferably contemplates embodiments wherein multiple MCs 160, UISCs 165, MSSs 190, MOPs 200, schedulers 205, 210, and routers 215 are operating simultaneously with and as part of the system 100 in either locally integrated and/or multithreaded arrangements, and/or in cooperation with multithreaded, remote and distributed processing arrangements using distributed resources 150, 170.”

Id. ¶ 94. The MC, USIC, and MSS, are, thus, parts of system 100, which indicates that they, at a minimum, are capable of being implemented as integral parts of the same general purpose computer 100. The MSS and ISS are essentially names for the same subsystem component, and, thus, the ISS, recited only in independent claim 11, also contains the capability to be implemented on a general purpose computer. *Id.* ¶ 112.

Furthermore, the recited functions of the MC, USIC, MSS, and ISS, as set forth in the express language of independent claims 1, 10, and 11, are merely to communicate data. Data communication is a basic function of a general purpose computer. Therefore, these components, whether software subsystems or separate, distributed computers, perform functions within the capabilities of general purpose computers.

We are, accordingly, unpersuaded that the extra “hardware and software elements” of the MC, USIC, MSS, and ISS represent an inventive concept that takes the system claims out of being mere computer implementations of the abstract idea.

We have reviewed the Appellants’ extensive arguments about subject matter eligibility, but, in light of the above analysis, determine that they are unpersuasive. For example, the Appellants argue that claims are “limited to a particular practical application” and are, therefore, patentable (Appeal Br. 10), that the transformation of data as in the appealed claims is patentable (*Id.* 11), that the claims are “inextricably linked to the operations of computers and computer networks” and “advance computer technology” (*Id.* 12–14), that the claims do not monopolize all applications of the abstract idea (*Id.* 15–18), that the claims produce “a new and useful end,” (*Id.* 22), and that the claims have steps that confine the claims “to a particular useful application” (*Id.* 23). *See also* Reply Br. 2–17.

None of these arguments overcome the ineligibility of the claims established under the analysis above. For example, the ability to implement the solution using functions normally performed by general purpose computers indicates the claims are not “inextricably linked to the operations of computers,” and, thus, we are unpersuaded that they represent advances in

computer technology. Further, while preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). We are unpersuaded that the Appellants' preemption analysis overcomes the analysis set forth above. Finally, we are unpersuaded that performing well-known "changing format" functions is a new and useful end or application, for the reasons set forth.

Therefore, we also sustain the rejection of independent claims 1, 10, and 11 under 35 U.S.C. § 101 as being directed to abstract ideas, as well as claims 2–4, 6–9 and 12–20 that were not separately argued. However, because our rationale is different from that of the Examiner, we denominate our affirmance as a new ground of rejection.

Rejection of Claims 1, 3, 4 and 6–9 under 35 U.S.C. § 103(a)

We are unpersuaded by the Appellants' arguments that neither Cooke nor Pulkkinen discloses communicating "media objects," as required by independent claim 1. Appeal Br. 27–28.

Cooke is directed to systems dealing with medical images using "specialized hardware and software is known in the art as a picture archiving and communication system (or 'PACS')." Cooke, 1:24–26. Cooke discloses "PACS invention described herein is preferably implemented via a DICOM 3.0" protocol. *Id.*, 5:66–6:7. Cooke explains it "receives studies from one or more imaging modalities and/or from the remote sources, and provides DICOM security and validation services therefor. To this end, the network gateway preferably includes optical character recognition ('OCR') and APIP translation capabilities to accommodate non-DICOM 3.0 imaging modalities." *Id.*, 10:16–22.

Therefore, Cooke discloses a system that communicates media objects, as claimed, and as construed in light of the Specification, including the cases where the media object encompass medical imagery data. *See, e.g.,* Spec. ¶¶ 4, 33, 79.

We are also not persuaded by the Appellants' argument that Cooke "does not involve on the fly format translation of a media object and incompatible systems." Appeal Br. 28.

The Specification does not define "on the fly," but describes that "a real-time or dynamic, on-the-fly continuous SMO update mode wherein SMOs are updated during processing or as SMOs are communicated during other processing operations." Spec. ¶ 56.

Cooke discloses "the network gateway preferably includes optical character recognition ('OCR') and AIP translation capabilities to accommodate non-DICOM 3.0 imaging modalities. The network gateway also controls routing of these studies to selected PACS core components and extensions, and pre-fetching and routing of relevant prior studies between the archive and reviewing stations." Cooke, 10:19–26. As Cooke translates non-DICOM to DICOM modalities during routing, we are unpersuaded that Cooke fails to disclose updating the media objects "on the fly," as claimed.

Because Cooke discloses "on the fly changing format of said media object from said first format to said second format based on said at least one rule," as claimed, Pulkkinen is a cumulative reference.

In addition, we are unpersuaded by the Appellants' argument that Pulkkinen is non-analogous art to the claimed invention. Appeal Br. 30–31. Pulkkinen is directed to establishing interfaces between an IT system and different AIDC systems (Pulkkinen ¶ 10), which involves automatic

identification of x-ray images (*Id.* ¶ 44). Because Pulkkinen is directed to the interaction of different AIDC systems that utilize “different formatting” for tracking images (*Id.* ¶ 8), we find that it is in the same field of endeavor as the claimed invention.

Next, the Appellants argue the Examiner has failed to demonstrate, in Cooke, the disclosure of 1) a parameter database, 2) a management console, 3) a user interactive subsystems controller, 4) a modality services subsystem in communication with the management console, and 5) a media object processor. Appeal Br. 31–33. We are not persuaded by the Appellants’ arguments.

The Specification describes that the management console “may also preferably be configured as an integral part of, and/or as a local or remote and distributed computing resource 170 of the dynamic media object management system 100.” Spec. ¶ 70. Further, the management console “may also be optionally configured independent of and/or as part of or in cooperation with the UISC 165 to be an interface, for a primary user or operator, with the dynamic media object management system 100.” *Id.* ¶ 71. In addition, “the system 100 also preferably contemplates embodiments wherein multiple MCs 160, UISCs 165, MSSs 190, MOPs 200, schedulers 205, 210, and routers 215 are operating simultaneously with and as part of the system 100 in either locally integrated and/or multithreaded arrangements.” *Id.* ¶ 94. Rather than requiring five separate computers, we construe the various argued components as functional subsystems that may be embodied in software and implemented in a single computer, or variously distributed across multiple computers.

Cooke discloses a parameter database, as claimed, at “database server 2” (Cooke, 10:54–57), which stores parameters, and “management console (MC), wherein said at least one MC includes a user interactive subsystems controller (UISC) in communication with said at least one parameter database,” as claimed, at, at least, “archive station 4,” which includes a graphical user interface and communications capabilities to receive and transmit data (*Id.*, 8:48–56). This also meets the claim language of “at least one modality services subsystem (MSS) in communication with said at least one management console wherein said MSS is operative to communicate the SMOs,” because archive station 4 can communicate imaging studies and data. *Id.* In addition, Cooke discloses a “media object processor (MOP) interoperable with said at least one MC and said MSS, wherein said at least one MOP is connected to dynamically receive SMOs from said MSS and normalize the SMOs on the fly,” at “network gateway 6,” which:

[R]eceive studies from one or more imaging modalities and/or from the remote sources, and provides DICOM security and validation services therefor. To this end, the network gateway preferably includes optical character recognition (‘OCR’) and APIP translation capabilities to accommodate non-DICOM 3.0 imaging modalities. The network gateway also controls routing of these studies.

Id., 10:16–26.

We are, thus, unpersuaded that Cooke fails to meet the claim language of the disputed components.

For these reasons, we are unpersuaded that the Appellants have shown error on the part of the Examiner in rejecting independent claim 1 under 35 U.S.C. § 103(a). We, thus, sustain the rejection of independent claim 1.

We also sustain the rejection of dependent claims 3, 4 and 6–9 that were not argued separately. *See* Appeal Br. 38.

Rejection of Claim 10 under 35 U.S.C. § 103(a)

We are not persuaded by the Appellants’ argument that, according to the Appellants, Cooke fails to disclose the claimed “target element” that is part of a media object, and is updated by the system, because Cooke’s target is “different.” Appeal Br. 35–36.

Cooke discloses the “[n]etwork gateway 6 then executes code to determine, in step 61, if the study is broken, meaning that it has demographic data that is incorrect in that is conflicts with information already contained on the PACS.” Cooke, 16:51–54. Cooke next discloses storing the broken study, and “the PACS administrator may ‘fix’ the broken study in step 64.” *Id.*, 16:58–61. The target element is, thus, the demographic data in the study, where the study is the media object containing data and images. Cooke, accordingly, meets the language of a MOP that normalizes media objects on the fly, as in independent claim 1, and “at least one media object processor (MOP) interoperable with said at least one MC and said MSS, wherein said at least one MOP includes a multimode updater (MU) responsive to at least one update parameter that enables said MU to update the at least one target element of each of the SMOs,” as recited in independent claim 10.

The remainder of the Appellants’ arguments directed at independent claim 10 merely restate and refer to arguments previously directed to independent claim 1, asserting they are also relevant to independent claim 10. *See* Appeal Br. 33–37.

For the reasons set forth above, the Appellants have not persuasively shown error on the part of the Examiner. For these reasons, we sustain the rejection of claim 10 under 35 U.S.C. § 103(a).

Rejection of Claims 11 and 13–20

The Appellants refer to and repeat the arguments directed to independent claim 1. They are equally unpersuasive, when applied to independent claim 11, because Cooke discloses translating images of studies from non-DICOM sources into a DICOM-compliant system, and, thus, meets the additional claim language of, essentially, “limited to images.” Appeal Br. 37–38. We, therefore, sustain the rejection of claim 11, as well as dependent claims 12–20 that were not argued separately. *Id.* at 38.

Rejection of Claims 21–28, 31–38, and 41–46 under 35 U.S.C. § 103(a)

The Appellants repeat, for independent claim 21, many of the arguments set forth for independent claim 1, including the alleged lack of media objects, the inapplicability of Pulkkinen because it is allegedly not analogous art, and that Cooke does not change the format of media objects. Appeal Br. 38–42. Those arguments are unpersuasive for the same reasons we articulated above for independent claim 1. The Appellants also argue that Cooke fails to disclose a rule for changing the format of media objects. Appeal Br. 42.

In addition to network gateway 6, which has “APIP translation capabilities to accommodate non-DICOM 3.0 imaging modalities,” and, thus, stores rules for translating each of the modalities, or formats (Cooke, 10:19–22), Cooke also discloses “medical gateway 52,” where:

a medical gateway is a programmable secondary capture device for non-DICOM 3.0 imaging modalities and output devices. The medical gateway is used to provide connectivity between these modalities/devices and the PACS. To this end, medical gateways communicate with the core PACS components via APIP, or its equivalent. In general, each medical gateway can support up to three imaging modalities or output devices, as shown, e.g., in FIG. 1. That is, in the figure, medical gateway 52 (“MG”) is interposed between the PACS core components and two imaging modalities 54.

Id., 15:32–44. A gateway that translates formats from multiple non-DICOM imaging modalities would have stored programmatic rules for making those translations, and, thus, meets the claim language of “providing a data base having at least one rule for changing format of media objects, wherein said at least one rule for changing format,” as claimed.

For these reasons, we sustain the rejection of independent claim 21, as well as dependent claims 22–28, 31–38, and 41–46 that were not argued separately. Appeal Br. 42.

Rejection of Claims 2, 12, 29, 30, 39 and 40 under 35 U.S.C. § 103(a)

Dependent claim 2 recites “a predetermined schedule parameter, wherein the at least one MOP further includes at least one scheduler responsive to said predetermined schedule parameter for scheduling receipt and processing said media object.” Dependent claims 12, 29, 30, 39, and 40 also recite language concerning scheduling.

We are unpersuaded by the Appellants’ argument that, at the section of Cooke cited by the Examiner, Cooke only describes *where* images are to be routed, but not anything regarding scheduling. Appeal Br. 42. The argument is unpersuasive because Cooke also discloses a “section called ‘Off Peak Schedules’ allows the user to configure time ranges for use as

routing criteria. For example, a route could be configured to send studies to a station where an on-call physician is seated during evening hours.”

Cooke, 16:30–34. In addition, Cooke discloses “the PACS pre-fetches images (and/or summaries of information relating to the images) in response to a scheduled event. In this regard, ‘pre-fetching’ refers to the process of automatically (i.e., without user intervention) retrieving images (and/or summaries) before the scheduled event.” *Id.*, 3:14–19. Cooke, thus, schedules receipt, processing, and transmission of media objects.

For this reason, we sustain the rejection of claims 2, 12, 29, 30, 39, and 40 under 35 U.S.C. § 103(a).

DECISION

We AFFIRM the rejection of claims 1–4 and 6–46 under 35 U.S.C. § 101.

We AFFIRM the rejection of claims 1–4 and 6–46 under 35 U.S.C. § 103(a).

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (2008). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered

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by the examiner, in which event the proceeding will be remanded to the examiner

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED; 37 C.F.R. § 41.50(b)