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Valhalla, NY 10595

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TIEDEMAN, JASON S

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte SOREN S. JOHNSON and ERIK JOHNSON

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Appeal 2016-008187<sup>1</sup>  
Application 13/376,607  
Technology Center 3600

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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 1–6, 9–16, 19, and 20. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

The invention relates generally to automated time window centering on a navigable timeline display. Spec. 1:22–24.

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<sup>1</sup> The Appellants identify Koninklijke Philips Electronics N.V. as the real party in interest. Appeal Br. 2.

Independent claim 1 is illustrative:

1. A system that facilitates animating and automatically centering a selected tick mark on a timeline for visual presentation to a user, including:

a processor that executes computer-executable instructions stored in a non-transitory memory, the instructions including:

receiving, from an input tool with which the user selects a tick mark, information regarding a user-selected tick mark representing a time on the timeline, which is linear and comprises a plurality of tick marks representing discrete points in time;

receiving information regarding a user-selected time window duration having a start time and end time, the time window duration including the user-selected tick mark;

centering the user-selected time window duration on the user-selected tick mark on the timeline as it is displayed to the user; and

animating movement of the timeline while centering the user-selected tick mark on the timeline during a user-selected predetermined time period, wherein the animation includes one or more intermediate states between an initial timeline position and a final timeline position, wherein the animation of the timeline is displayed to the user as the timeline appears to shift during the user-selected predetermined time period from the initial position to the final position in a manner that is perceptible to the user, and wherein the time window remains centered on the user-selected tick mark during the animation as the user-selected tick mark is shifted;

an imaging device that generates images of a patient; and

a display that presents the timeline and one or more generated images to the user;

wherein the processor timestamps and stores the images to a memory and wherein the processor identifies patient image

data corresponding to the user-selected time window duration, and outputs the identified patient image data to the display, where it is presented to the user.

Claims 1–6, 9–16, 19, and 20 are rejected under 35 U.S.C. § 101 as patent-ineligible subject matter.

Claims 1–4, 6, 9–14, 16, 19, and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Finke-Anlauff et al. (US 2005/0138066 A1, pub. June 23, 2005) (hereinafter “Finke-Anlauff ’066”), Finke-Anlauff et al. (US 2005/0105374 A1, pub. May 19, 2005) (hereinafter “Finke-Anlauff ’374”), Metsatahti et al. (US 2005/0108253 A1, pub. May 19, 2005) (hereinafter “Metsatahti”), Barrios et al. (US 2009/0177998 A1, pub. July 9, 2009) (hereinafter “Barrios”), and “Demonstrate concepts through animation”, 2005 (retrieved from <http://www.studio.adobe.com>) (hereinafter “Photoshop”).

Claims 5 and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Finke-Anlauff ’066, Finke-Anlauff ’374, Metsatahti, Barrios, Photoshop, and Kondo et al. (US 2009/0254370 A1, pub. Oct. 8, 2009) (hereinafter “Kondo”).

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

## ANALYSIS

### Patentable subject matter

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.*, 132 S. Ct. 1289, 1296–97 (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.*

We are persuaded by the Appellants’ argument that the Examiner erred in asserting that the claims are directed to a patent-ineligible abstract idea. Appeal Br. 8–12; Reply Br. 3–6.

The Examiner initially finds the claims “are directed to an abstract idea because an abstract idea is recited in the claims.” Final Act. 4. The

Examiner then purportedly identifies the abstract idea in each of independent claims 1, 11, and 20 by reciting, for each independent claim, the entire body of each claim. *Id.* 4–7. The Examiner then summarizes as follows:

Displaying data in the form of an animated time line that shifts to a user-selected time window and identifies and presents patient data corresponding to the selection is an abstract idea because it uses categories (time windows, tick marks) to organize (select corresponding imaging data), store (stored images), and transmit (display) information.

*Id.* The Examiner is, thus, essentially asserting that the claims are directed to using time windows and tick marks to select corresponding imaging data, storing images, and displaying information, and that this is similar to claims found abstract that use categories to organize, store, and transmit information. We agree with the Appellants that this analysis is erroneous.

Each independent claim recites language substantially identical to, for example:

centering the user-selected the time window duration on the user-selected tick mark on the timeline as it is displayed to the user;  
animating, via a processor, movement of the timeline while centering the user-selected tick mark on the timeline during a user-selected predetermined time period, wherein the animation includes one or more intermediate states between an initial timeline position and a final timeline position, wherein the animation of the timeline is displayed to the user as the timeline appears to shift during the user-selected predetermined time period from the initial position to the final position in a manner that is perceptible to the user.

We find that these limitations perform specific animation operations that control the specific technique for displaying information. We find that these specific operations and techniques are directed to controlling the

behavior of a display device, which is more than the mere displaying of information asserted by the Examiner. *See, e.g.*, Spec. 3:10–19

(“FIGURE 1 illustrates a system **10** for animating and automatically centering a timeline on a computer display by clicking on the time at the center of a desired window along the timeline. Data corresponding to a temporal window centered on the selected (e.g., clicked) time is immediately displayed on the screen. Animation is employed to smoothly shift the timeline indicator over a predetermined time period (e.g., about 1-3 seconds), such that the selected temporal window is transitioned into the center of the screen. The user can expand or contract the window by sliding window boundary tabs or by clicking on or entering a displayed window size (e.g., 1 hour, 2 hours, etc.). Since the window is positioned symmetrically about the center of the window, moving either of the boundary tabs can cause the other boundary tab to be moved symmetrically.”).

To that end, we discern that the instant claims are more like those set forth in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), which our reviewing court determined were patent eligible. *Id.* at 1315 (“The claimed process uses a combined order of specific rules that renders information into a specific format that is then used and applied to create desired results: a sequence of synchronized, animated characters.”).

We are persuaded that these specific operations and techniques go beyond merely selecting, storing, and displaying information, as essentially asserted by the Examiner. Because the claims recite limitations that extend outside of the abstract idea essentially asserted, the Examiner has not sufficiently demonstrated that the claims are similar to patent-ineligible claims that merely recite organizing, storing, and transmitting information.

Even if we were to accept the Examiner’s initial assertion, however, that every limitation recited in every independent claim is directed on the whole to abstract ideas, we are persuaded that the Examiner has not shown



sufficiently that the same “centering” and “animating” operations are not “significantly more,” as they are claimed, and described in the Specification, as being performed on a “computer screen or other interface.” Spec. 8:1–13. We are not aware that, and the Examiner has not established sufficiently that, these described functions are within the scope of operations capable of being performed on a general purpose computer, without special programming for graphics manipulation.

For the above reasons, we do not sustain the rejection of claims 1–6, 9–16, 19, and 20 under 35 U.S.C. § 101.

*Rejection of Claim 1 under 35 U.S.C. § 103(a)*

We are not persuaded by the Appellants’ argument that Metsatahti fails to disclose a tick mark that marks a “point in time,” because Metsatahti instead has marks that mark a “time *period*.” Appeal Br. 12; *see also* Reply Br. 9–10. The Appellants further argue “since the selectable units (e.g., dates) of Metsatahti represent time durations or windows comprising a range of time, they cannot also be interpreted to be selectable tick marks that demarcate one or more discrete points in time,” as claimed. *Id.* at 13.

Specifically, we are unpersuaded that a duration of time cannot be a “time period” in one context, but a “discrete point in time” in another. We turn to a dictionary definition of “discrete” as “[c]onstituting a separate thing: Computers treat time as a series of discrete moments rather than a continuous flow.” AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, Fifth Edition, 2016. Accordingly, on a scale of a week, a day is an approximation of a discrete time. In a day, a second is an approximation of a discrete time. Thus, both a day and a second can be periods of time, but

also can be “discrete points in time,” as claimed, because, any “discrete point in time” can be broken down into smaller and smaller intervals.

Metsatahti discloses for its time bar:

the time segment defined by a level may either be predefined by the application or may be dynamically configured by the device user. For example, in the illustrated embodiment the time span **350** level may define monthly segments, the time period **340** level may define weekly segments and the time unit **330** level may define day segments. Additional levels, such as a century, decade, year, hour, week, day or second may also be included.

Metsatahti ¶ 59. Metsatahti, thus, discloses smaller time units, within a more extended timeframe, which serve as markers for discrete points in time, as claimed.

As to the next argued limitations, the Examiner finds “*receiving information regarding a user-selected time window duration having a start time and end time, the time window duration including the user-selected tick mark*” disclosed in Barrios at paragraphs 22–23. Final Act. 11–12. The Appellants argue Barrios fails to disclose the claim language, because the “user is not *selecting a time window duration* having a start and end time in which the time window duration includes the user-selected tick mark.” Appeal Br. 14. This, according to the Appellants, is because Barrios discloses moving the selected time period. *Id.*

We are unpersuaded by the Appellants’ argument, because Barrios also discloses resizing the slider bar, which meets the claim language. Barrios ¶ 22 (“slider bar **225**, which a user of computer **100** may move and/or resize using an input device, such as mouse **120**, to adjust the amount and/or scale, respectively, of document data **210A** displayed in window **200**. Slider bar **225** may include a ‘graphically-textured’ central area.”). The

central area corresponds to the claimed tick mark, and the resizing of the bar corresponds to receiving information regarding the duration, as claimed.

The Appellants finally argue, with respect to “the time window remaining centered on the selected tick mark during the animation,” that:

When the desired date is evident on the media handle 320, the user may release the media handle, which will *automatically reposition the media handle in the centerline position* and the desired date and associated media view or calendar view will underlie the media handle. In other words, the media handle 320 is centered *after* the user releases the media handle. Thus, the media handle 320 does not remain centered *during animation* as the user moves the media handle to the left.

Appeal Br. 14; *see also* Reply Br. 10–11.

We are unpersuaded by the Appellants’ argument. The claim language addresses the behavior of the “time window” in relation to the “tick mark” that is centered in the time window. In Finke-Anlauff ’066, the “media handle **320**” corresponds to the claimed “time window,” and the “center mark **420**” corresponds to the claimed “tick mark.” *See* Finke-Anlauff ’066 ¶ 62. Finke-Anlauff ’066 discloses moving the media handle 320 to the right or left to cause the center mark 420 to line up above time periods before or after the current time period. *Id.* ¶¶ 61–69. The center mark 420, however, remains centered above the time window, and nowhere is it disclosed that the center mark 420 ceases to be centered on the time window during movement of the time window. Therefore, Finke-Anlauff ’066 meets the claim language of “the time window remaining centered on the selected tick mark during the animation.”

Indeed, the Appellants’ argument is actually misdirected, because it cites sections of Finke-Anlauff ’066 that describe the behavior and placement of the media handle 320 (time window) with respect to the center

of the display window, not with respect to the tick mark in the center of the time window, as recited in the portion of the relevant claim limitation to which the argument is directed.

The Appellants have, thus, not persuasively shown error in the Examiner's rejection of claim 1. For these reasons, we sustain the rejection of independent claim 1 under 35 U.S.C. § 103(a).

Rejection of Claims 2, 6, 9–12, 16, 19, and 20 under  
35 U.S.C. § 103(a)

The Appellants argue independent claims 11 and 20 by essentially referring to and repeating the arguments directed to claim 1. *See* Appeal Br. 18–20, 23–26. The Appellants do not advance arguments specifically directed to the language in dependent claims 2, 6, 9, 10, 12, 16, and 19, but instead assert the rejection of each claim is in error for the same reasons as the independent claim from which each dependent claim depends. *See id.* 15–18, 21–23. Therefore, because we discern no error in the rejection of independent claim 1, we sustain the rejection of claims 2, 6, 9–12, 16, 19, and 20 under 35 U.S.C. § 103(a).

Rejection of Claims 3 and 13 under 35 U.S.C. § 103(a)

Dependent claim 3 recites “a patient monitor that measures patient parameter data; wherein the processor timestamps and stores the measured patient parameter data to a memory.” Dependent claim 13 recites substantially similar language.

We are persuaded by the Appellants' argument that the Examiner has not adequately shown the prior art to disclose a “*patient monitor that measures patient parameter data,*” as claimed in claims 3 and 13. Appeal

Br. 15–16; *see also id.* 21–22, Reply Br. 13–14 (“A camera does not measure anything; rather, a camera simply captures videos/images”).

The Examiner finds Finke-Anlauff “’066 teaches an imaging device that creates (generates) images of a patient and associates metadata with the images (interpreted as patient parameter data, the Examiner noting that the Applicant has not defined what must or must not constitute patient parameter data).” Final Act. 16.

We agree with the Appellants that an imaging device does not measure a patient, but merely captures images, and the Examiner has not explained sufficiently how images correspond to measurements. The Specification describes “[m]easured parameter data may include, without being limited to, heart rate, respiratory rate, electrocardiogram (ECG) data, blood-oxygen level (SpO<sub>2</sub>), blood glucose level, temperature, blood pressure, or any other patient parameter than can be measured by a patient monitor 26.” Spec. 4:13–16. We find the ordinary and customary meaning of “measurement” to be the “dimension, quantity, or capacity determined by measuring: *the measurements of a room.*” AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, Fifth Ed., 2016. Again, we are unclear how an image itself is any of the above “measured parameter data.”

Dependent claim 5 depends from dependent claim 3. In rejecting dependent claim 5, the Examiner additionally cites Kondo (Final Act. 19–20), which discloses “the values of the electrocardiogram, average blood pressure, the number of times of respiration, and blood oxygen saturation which are acquired during measurement are displayed in the graphic chart.” Kondo ¶ 124. The Examiner then asserts the following

it would have been *prima facie* obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system for animating display of data and a timeline by selecting a tick mark and a time window on a timeline of [Finke-Anlauff '066] and Photoshop so as to have included that the data included various types of body measurement data, in accordance with the teaching of Kondo, in order to provide for an efficient and effective means of viewing body measurement data, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.”

Final Act. 20. We are persuaded that the above citations to Kondo and rationale to combine with Finke-Anlauff '066 account for the limitations of dependent claim 3. Accordingly, we sustain the rejection of dependent claim 3, however, because we add Kondo, we designate it as a new ground of rejection. We do the same for similarly-worded dependent claim 13.

*Rejection of Claims 4 and 14 under 35 U.S.C. § 103(a)*

Dependent claim 4 depends from dependent claim 3. The Appellants assert, concerning dependent claim 4, that “nothing in these cited portions of Finke-Anlauff '066 describing measured parameter data (22) having timestamps *corresponding to the predefined time window.*” Appeal Br. 16. We agree. While the cited portions of Finke-Anlauff '066 disclose timestamps for the image, we are persuaded that the Examiner has not shown adequately how the relationship between that timestamp and its image corresponds to “timestamps corresponding to the predefined time window,” as claimed. We do not sustain the rejection of dependent claim 4, and also do not sustain the rejection of dependent claim 14 on the same basis.

Rejection of Claims 5 and 15 under 35 U.S.C. § 103(a)

Dependent claim 5 depends from dependent claim 3. The Appellants do not advance arguments specifically directed to the language in dependent claims 5 and 15, but instead assert the rejection of each claim is in error for the same reasons as the independent claim from which each dependent claim depends. Appeal Br. 26–27. As noted above, Kondo remedies the shortcomings in dependent claims 3 and 13 with the cited portions of Finke-Anlauff '066 we articulated above. As a result, we also sustain the rejection of claims 5 and 15 under 35 U.S.C. § 103(a).

DECISION

We REVERSE the rejection of 1–6, 9–16, 19, and 20 under 35 U.S.C. § 101.

We AFFIRM the rejections of claims 1–3, 5, 6, 9–13, 15, 16, 19, and 20 under 35 U.S.C. § 103(a).

We REVERSE the rejection of claims 4 and 14 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)(1)(iv).

AFFIRMED-IN-PART; 37 C.F.R. § 41.50(b)