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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERIC D. NEWMAN, JAMES B. JONES,
VIRGINIA R. LERCH, and JONATHAN BILLET

Appeal 2016-008251
Application 14/448,211¹
Technology Center 3600

Before ALLEN R. MACDONALD, BETH Z. SHAW, and
AMBER L. HAGY, *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 1–3, 5–7, 17–19, and 21–23. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ The real party in interest is Geisinger Clinic. App. Br. 2.

INVENTION

The invention is for extracting item features or attributes and automatically generating a corresponding label for purposes of refining searches and for promoting product discovery via recommendations. Spec.

¶ 7.

Claim 1 is representative and reproduced below:

1. A method for distributing patient data, comprising:
 - storing, in a patient database, a plurality of patient data entries, wherein each patient data entry includes data related to a patient including at least a patient identifier and a plurality of patient data points, each patient data point in the plurality of patient data points being associated with an access control;
 - storing, in a user database, a plurality of user data entries, wherein each user data entry includes data related to a user including at least a user identifier, authentication information, and access control information;
 - receiving, by a receiving device, at least questionnaire answers from a first input device, wherein the questionnaire answers are related to at least medical symptoms or history associated with a patient and a specific patient identifier associated with the patient;
 - updating, in the patient database, the plurality of patient data points included in a specific patient data entry, where the included patient identifier corresponds to the specific patient identifier, based on the received questionnaire answers;
 - transmitting, by a transmitting device, a notification to a second input device indicating that the specific patient data entry has been updated in the patient database based on the received questionnaire answers;
 - receiving, by the receiving device, a request for patient data from the second input device, wherein the request for patient data includes the specific patient identifier, a specific user identifier, and supplied authentication information; and

transmitting, by the transmitting device, a subset of the plurality of patient data points included in the specific patient data entry to the second input device based on the access control associated with each patient data point in the subset of the patient data points and the access control information included in a specific user data entry, where the user identifier included in the specific user data entry corresponds to the specific user identifier, if the supplied authentication information corresponds to the authentication information included in the specific user data entry.

REJECTION

The Examiner rejected claims 1–3, 5–7, 17–19, and 21–23 under 35 U.S.C. § 101. Final Act. 3.

The Examiner rejected claims 1, 2, 5–7, 17, 18, and 21–23 under 35 U.S.C. § 103 as being unpatentable as obvious over Hasan (US 7.707,047 B2) and Greene (US 2005/0251416 A1). Final Act. 5.

The Examiner rejected claims 3 and 19 under 35 U.S.C. § 103 as being unpatentable as obvious over Hasan, Greene, and Official Notice. Final Act. 9.

ANALYSIS

Section 101 Rejection

The Examiner determines claims 1–3, 5–7, 17–19, and 21–23 are directed to the abstract idea of gathering, storing, and distributing patient data. Ans. 13. The Examiner also determines additional elements recited in these claims do not amount to significantly more than the abstract idea itself. *Id.* at 13–14. According to the Examiner, the claims require no more than generic computer functions routinely used in computer applications such as storing, receiving, updating, and transmitting data. *Id.* at 14.

Appellants present several arguments against the 35 U.S.C. § 101 rejection. App. Br. 6–9; Reply Br. 3–12. Appellants contend the claims are not directed to an abstract idea and that the claims amount to significantly more than an abstract idea. *Id.*

We do not find Appellants’ arguments persuasive. Instead, we conclude the Examiner has provided a sufficient response to Appellants’ arguments supported by a preponderance of evidence. Ans. 13–16; *see also* Final Act. 6–9. As such, we agree with and adopt the Examiner’s determinations and explanations provided therein. *Id.*

The Supreme Court has long held that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The “‘abstract ideas’ category embodies ‘the longstanding rule that ‘[a]n idea of itself, is not patentable.’” *Id.* at 2355 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court sets forth an analytical “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–78 (2012)). 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.*

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional

elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 77–79). In other words, the second step is to “search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (alteration in original) (quoting *Mayo*, 566 U.S. at 77–78). The prohibition against patenting an abstract idea “cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant postsolution activity.’” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010).

Addressing the first step of the *Alice* inquiry, we agree that Appellants’ claims are directed to an abstract idea, as explained by the Examiner. Ans. 13. All the steps recited in Appellants’ claims are abstract processes of storing, receiving, updating, and transmitting data. *Cf. Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“collecting, analyzing, and displaying certain results of the collection and analysis” is abstract); *In re Salwan*, Appeal No. 2016-2079, 2017 WL 957239 at *3 (Fed. Cir. Mar. 13, 2017) (affirming the rejection under § 101 of claims directed to “storing, communicating, transferring, and reporting patient health information,” noting that “while these concepts may be directed to practical concepts, they are fundamental economic and conventional business practices”); *Cyberfone Systems, LLC v. CNN Interactive Grp, Inc.*, 558 F. App’x 988, 992 (Fed. Cir. 2014) (nonprecedential) (“using categories to organize, store, and transmit information is well-established”); *Apple, Inc. v. Ameranth*, 842 F.3d 1229 (Fed. Cir. 2016) (“ability to generate menus with certain features” held

abstract). Additionally, the claims are not directed to a specific improvement in the way computers operate. *Cf. Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016).

Turning to the second step of the *Alice* inquiry, the limitations in Appellants’ claims do not add anything “significantly more” to transform into a patent-eligible application the abstract concept of storing, updating, and transmitting data. Ans. 14–16; *see also Alice*, 134 S. Ct. at 2357.

We agree with the Examiner that the specific details of the claims are not “significantly more” than the abstract idea. Ans. 14. These are ordinary steps in data analysis and are recited in an ordinary order. Limiting an abstract concept of generating and organizing data to a general purpose computer having generic components, such as the “receiving device” recited in Appellants’ claims, does not make the abstract concept patent-eligible under 35 U.S.C. § 101.

As recognized by the Supreme Court, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2358; *see id.* at 2359 (concluding claims “simply instruct[ing] the practitioner to implement the abstract idea of intermediated settlement on a generic computer” are not patent eligible).

Although Appellants argue the claims “are directed to a technical solution for distributing patient data related to an electronic health record that is updated via patient questionnaire answers” and but for “the existence of computers and electronic health records, there would be no ability to achieve the claimed technological solution” (Reply. Br. 7), we disagree. Merely using a computer to perform more efficiently what could otherwise be accomplished manually does not confer patent-eligibility.

As our reviewing court has held, “the use of the Internet is not sufficient to save otherwise abstract claims from ineligibility under § 101.” *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715–16 (claims merely reciting an abstract idea of using advertising as currency as applied to particular technological environment of the Internet are not patent eligible; “use of the Internet does not transform an otherwise abstract idea into patent-eligible subject matter”); *see also Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (claims reciting “generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer” are not patent eligible); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333–34 (Fed. Cir. 2012) (“[s]imply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render [a] claim patent eligible”).

Appellants argue that their claims are rooted in computer technology. App. Br. 7 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (2014)). The claimed invention in *DDR Holdings* did not merely use the Internet but rather changed how interactions on the Internet operated. In contrast, Appellants’ claims are not directed to a problem rooted in computer technology, as outlined in *DDR Holdings*. Reading the present claim limitations alone and as an ordered combination, we conclude Appellants’ claimed invention corresponds to a method of updating patient data based on a patient questionnaire.

Because Appellants’ claims are directed to a patent-ineligible abstract concept and do not recite something “significantly more” under the second

prong of the *Alice* analysis, we sustain the Examiner’s rejection of these claims under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter in light of *Alice* and its progeny.

Section 103

Appellants argue the Examiner erred in rejecting the pending claims under as being unpatentable as obvious over Hasan and Green. App. Br. 9–11. In particular, Appellants argue Greene fails to teach “transmitting, by a transmitting device, a notification to a second input device indicating that the specific patient data entry has been updated in the patient database based on the received questionnaire answers.” App. Br. 9–10. Appellants argue that Greene discloses that the patient that is completing the Ix (information therapy) sends a notification to a health plan or employer while the claims require that questionnaire answers are received from a patient via the first input device, that patient’s data is updated using the answers, and then a notification is sent to a second input device indicating that the patient data entry has been updated. *Id.*

The Examiner explains that the claims merely require a notification to be transmitted, but do not indicate that the patient cannot click a link. Ans. 17. Moreover, as the Examiner points out, the claims merely require a transmitting device to send the notification, and do not indicate that transmitting device is distinct from a device used by the patient. *Id.* at 18. We agree that Appellant’s arguments are not commensurate in scope with the claims for the reasons explained by the Examiner.

Appellants also argue Greene does not teach the specific notification of the claims. App. Br. 11; Reply Br. 13. In particular, Appellants argue

Greene's paragraph 47 only indicates the patient's understanding, and not that the patient's data was updated. Reply Br. 13.

Section 103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007).

The Examiner finds that "transmission of completed patient answers would also comprise a notification that those answers have been completed and updated." Final Act. 7. Greene explains that "upon completion of the Ix and indication of adherence and understanding, the patient is provided with means for notifying the health care network of the receipt and review of the Ix material." Greene ¶ 47. Greene teaches that "the patient's responses are monitored, recorded and scored by the website. . . . [A] website that monitors, records and stores data would inherently require use of an element to record data, that is, a database." Ans. 18. Moreover, Greene teaches not just notification of understanding, but also that the Ix program was completed. Greene ¶ 47 ("notification of completion"); Fig. 4 (18) ("Program's website offers to notify the employer/insurer of the patient's completion of the Ix therapy. Website also provides notification of transmitting answers to patient's physician."). Thus, we agree with the Examiner that the notification of claim 1 would have been obvious at the time the invention was made to one skilled in the art based on the combination of Hasan and Greene.

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Accordingly, we sustain the rejection of claim 1 under 35 U.S.C. § 103, and of claims 2,–3, 5–7, 17–19, and 21–23, for which Appellants present no additional arguments.

CONCLUSIONS

We affirm the rejection of claims 1–3, 5–7, 17–19, and 21–23 under 35 U.S.C. § 101.

We affirm the rejection of claims 1–3, 5–7, 17–19, and 21–23 under 35 U.S.C. § 103.

DECISION

The Examiner’s decision rejecting claims 1–3, 5–7, 17–19, and 21–23 is affirmed.

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).

AFFIRMED