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PHILIPS INTELLECTUAL PROPERTY & STANDARDS  
465 Columbus Avenue  
Suite 340  
Valhalla, NY 10595

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patti.demichale@philips.com  
marianne.fox@philips.com  
katelyn.mulroy@philips.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ROBERT C. LEICHNER<sup>1</sup>

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Appeal 2016-008743  
Application 12/091,100  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, MICHAEL C. ASTORINO, and  
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> Appellant identifies KONINKLIJKE PHILIPS, N.V. as the real party in interest. App. Br. 1

## STATEMENT OF THE CASE

Appellant seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 2–11, 14, 15, 18, 20, and 22–25. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

## BACKGROUND

Appellant' invention is directed to a health management system for remote interactive outpatient health monitoring and training at the patient's home. Spec. 1–2.

Claim 9 is illustrative:

9. A health management system comprising:  
one or more memories at a central location which store a patient profile corresponding to each of a plurality of patients and a plurality of educational content sessions, the educational content sessions being directed toward helping patients achieve a health management goal;

at least one feedback path from each of the patients which provides at least one input;

one or more processors at a patient site for each patient programmed to:

monitor for critical events based on user input and/or biometric data received from the patients;

automatically select a plurality of the content sessions and a flow of the selected educational content sessions for each patient based on the patient profile, the input from the corresponding patient, and on content flow rules, the selected educational content sessions for at least one of the patients including critical event content selected in response to detecting a critical event, and the selected for at least one of the patients including a previously

selected educational content session in response to the input from the corresponding patient; and, communicate the selected educational content sessions into a user interface associated with the corresponding patient; a display device at each user interface on which the selected educational content sessions are presented to the correspondent patient.

Appellant appeals the following rejection:

Claims 2–11, 14, 15, 18, 20, and 22–25 under 35 U.S.C. § 101.

#### PRINCIPLES OF LAW

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 patent-ineligible end of the spectrum includes fundamental economic practices, *Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611; mathematical formulas, *Parker*, 437 U.S. at 594–95; and basic tools of scientific and technological work, *Gottschalk*, 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 69.

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.*

Claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept”); *see also In re TLI Commc`ns. LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016).

## ANALYSIS

### *Rejection under 35 U.S.C. §101*

The Examiner held that claim 9 is directed to the abstract idea of selecting content and a flow of the content based on patient profile, patient input and rules. The Examiner further held that claim 9 recites using categories to organize store and transmit information and/or using rules to identify options and that the claim includes communicating, receiving data and displaying content. Final Act. 4.

Appellant’s argument that the claims are not directed to a fundamental economic practice, method of organizing human activity, an idea “of itself” or a mathematical formula is not persuasive of error by the Examiner, because the Examiner did not hold that the claims were so directed. Rather, the Examiner held that the claims relate to communicating, receiving and displaying content. Final Act. 4. As such, the Examiner holds that the claims are directed to collection, analysis and transmission of data, which has been held by the courts to be an abstract idea.

In regard to the second part of the *Alice* test, the Examiner held that the claims include generic computer structure that serves to perform generic computer functions that merely link the abstract idea to a particular technological environment. Final Act. 5.

We are not persuaded of error on the part of the Examiner in holding that claim 9 is directed to an abstract idea by Appellant's argument that claim 9 distinguishes over references and is novel. To the extent Appellant maintains that the limitations of claim 9 necessarily amount to "significantly more" than an abstract idea because the claimed apparatus is allegedly patentable over the prior art, Appellant misapprehends the controlling precedent. Although the second step in the *Alice/Mayo* framework is described as a search for an "inventive concept," the analysis is not an evaluation of novelty but rather, a search for "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." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1294). A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the claim sets forth a detailed and intricate series of hardware and computer operations that store and present a plurality of content sessions and a flow of selected educational sessions for each patient. Claim 9 recites a system that includes a memory at a central location and a processor with a user interface at the patient site, which is not an intricate series of hardware. In addition, claim 9 recites selecting content sessions, sending data between the memory at the central location and the user

interface and sending content session, which is not an intricate series of computer operations but rather merely sending data, processing data, and storing data. The Appellant has not established that the Examiner erred in finding that claim 9 does not disclose significantly more than the abstract idea.

We do not agree with the Appellant that the Examiner has failed to identify the abstract idea much less identify and analyze the additional limitations and provide a reasoned analysis why the additional limitations do not amount to significantly more. As we have stated above, the Examiner clearly identified the abstract idea on page 4 of the Final Action, and found that the additional elements did not amount to significantly more on page 5 of the Final Action.

In view of the foregoing, we will sustain the rejection as it is directed to claim 9.

Claim 11 further defines the content rules recited in claim 9, and, as such, further defines the abstract idea of claim 9. Therefore, we will sustain the rejection of this claim as well.

Claim 2 recites that the feedback path includes a biometric device, that the input includes biometric data acquired by the biometric device, and that the biometric data is wirelessly communicated to provide an input.

The Examiner found that the recitation of a biometric device did not amount to significantly more because the biometric device is well understood, routine, and conventional. Final Act. 5.

We will not sustain the rejection of claim 2 because the Examiner has not established or explained why a feedback path that includes a biometric device is not significantly more than the abstract idea articulated by the

Examiner. While a biometric device itself may be conventional and well known, the Examiner has not shown, nor even discussed, that the use of a biometric device to provide an input to a health management system is conventional and well known. Absent such a showing, the Examiner has failed to establish that claim 2 does not recite significantly more than the abstract idea.

In view of the foregoing, we will not sustain the rejection as it is directed to claim 2. We will also not sustain this rejection as it is directed to claims 3–8, 10, 14, 15, 18, 20, and 22–25 for the same reason.

#### DECISION

We affirm the Examiner's § 101 rejection of claims 9 and 11.

We do not affirm the Examiner's § 101 rejection of claims 2–8, 10, 14, 15, 18, 20, and 22–25.

#### TIME PERIOD

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)(2009).

AFFIRMED-IN-PART