UNITED STATES PATENT AND TRADEMARK OFFICE

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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 STEPHEN TREY MOORE and NEIL R. MCQUEEN

———————

Appeal 2017-001086
Application 14/193,246[1]
Technology Center 3600

———————

Before LARRY J. HUME, CARL L. SILVERMAN, and
JASON M. REPKO, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final
Rejection of claims 1–9, which are all claims pending in the application. We
have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] According to Appellants, the real party in interest is Airstrip IP Holdings,
LLC. App. Br. 4.

STATEMENT OF THE CASE[2]

The Invention

Appellants' disclosed embodiments and claimed invention "are generally directed to an enterprise scalable, data- and vendor-agnostic mobility architecture to securely deliver patient data and information from medical devices, electronic medical records (EMRs) and patient monitors to healthcare providers anywhere across a healthcare continuum." Spec. ¶ 19. Further, "implementations of the present disclosure provide integrated and unified views of patient data and patient information on mobile devices (e.g., smartphones, tablets) from a plurality of data sources across the healthcare continuum." *Id.*

Exemplary Claim

Claim 1, reproduced below, is representative of the subject matter on appeal (*emphasis* added to contested prior-art limitations):

> 1.   A computer-implemented method for providing a user of a mobile device access to patient information and patient physiological data, the method being executed using one or more processors and comprising:
>
> *receiving, by the one or more processors, user input, the user input indicating a user command to display a task screen*;
>
> in response to the user input, processing, by the one or more processors, user-specific data to *determine a plurality of patient icons, each patient icon representing a time-sensitive,*

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[2] Our decision relies upon Appellants' Appeal Brief ("App. Br.," filed Mar. 29, 2016); Reply Brief ("Reply Br.," filed Oct. 17, 2016); Examiner's Answer ("Ans.," mailed Aug. 15, 2015); Final Office Action ("Final Act.," mailed Nov. 27, 2015); and the original Specification ("Spec.," filed Feb. 28, 2014) (claiming benefit of US 61/788,233, filed Mar. 15, 2013).

patient-associated task comprising review and confirmation of the patient physiological data that is updated in real-time to be remotely executed by the user within a time period that is determined based on a time at which the patient physiological data started to be recorded; and

displaying the task screen on the mobile device, the task screen displaying the patient information and the patient physiological data associated with the time-sensitive, patient-associated task as *one or more patient icon groups that are differentiated based on an urgency of the time-sensitive, patient-associated task*, each patient icon group comprising a patient icon of the plurality of patient icons.

Prior Art

The Examiner relies upon the following prior art as evidence in rejecting the claims on appeal:

Bello et al. ("Bello")	US 2005/0055242 A1	Mar. 10, 2005
Reyes	US 2013/0253339 A1	Sept. 26, 2013
Humphrys et al. ("Humphrys")	US 2015/0254412 A1	Sept. 10, 2015

Rejections on Appeal

R1.   Claims 1–9 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 2.

R2.   Claims 1–9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bello, Reyes, and Humphrys. Final Act. 4.

CLAIM GROUPING

Based on Appellants' arguments (App. Br. 11–20), we decide the appeal of both Rejections R1 and R2 of claims 1–9 on the basis of representative claim 1.[3]

ISSUES AND ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. To the extent Appellants have not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv).

We disagree with Appellants' arguments with respect to Rejections R1 and R2 of claims 1–9 and, unless otherwise noted, we incorporate by reference herein and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons and rebuttals set forth in the Examiner's Answer in response to Appellants' arguments. We highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

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[3] "Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately." 37 C.F.R. § 41.37(c)(1)(iv). In addition, when Appellants do not separately argue the patentability of dependent claims, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

1. § 101 Rejection R1 of Claims 1–9

Issue 1

Appellants argue (App. Br. 11–15; Reply Br. 1–4) the Examiner's rejection of claim 1 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is in error. These contentions present us with the following issue:

Did the Examiner err in concluding the claimed invention is directed to a judicial exception, i.e., an abstract idea, specifically the abstract ideas identified by the courts of comparing new and stored information and using rules to identify options, without significantly more?

Analysis

Alice Framework

Section 101 provides that anyone who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" may obtain a patent. 35 U.S.C. § 101. The Supreme Court has repeatedly emphasized that patent protection should not extend to claims that monopolize "the basic tools of scientific and technological work." *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012); *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). Accordingly, laws of nature, natural phenomena, and abstract ideas are not patent-eligible subject matter. *Id.*

The Supreme Court's two-part *Mayo/Alice* framework guides us in distinguishing between patent claims that impermissibly claim the "building blocks of human ingenuity" and those that "integrate the building blocks into

something more." *Id.* (internal quotation marks, citation, and bracketing omitted). First, we "determine whether the claims at issue are directed to [a] patent-ineligible concept[]." *Id.* at 2355. If so, we "examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Id.* at 2357 (quoting *Mayo*, 566 U.S. at 72, 79). While the two steps of the *Alice* framework are related, the "Supreme Court's formulation makes clear that the first-stage filter is a meaningful one, sometimes ending the § 101 inquiry." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). We note the Supreme Court "has not established a definitive rule to determine what constitutes an 'abstract idea'" for the purposes of step one. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct at 2357).

However, our reviewing court has held claims ineligible as directed to an abstract idea when they merely collect electronic information, display information, or embody mental processes that could be performed by humans. *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting cases). At the same time, "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. Abstract ideas may include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Alice* 134 S. Ct. at 2355–57. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Id.* at 2354 ("[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.").

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Under the "abstract idea" step we must evaluate "the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (internal citation omitted). If the claims are not directed to a patent-ineligible concept, the inquiry ends. *See Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1262 (Fed. Cir. 2017). If the concept is directed to a patent-ineligible concept, we proceed to the "inventive concept" step. For that second step we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an "inventive concept" in the application of the ineligible subject matter' to which the claim is directed." *Affinity Labs*, 838 F.3d at 1258 (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

Alice Step 1 — Abstract Idea

Our reviewing court has held claims ineligible as being directed to an abstract idea when they merely collect electronic information, display information, or embody mental processes that could be performed by humans. *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting cases). At the same time, "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. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Alice*, 134 S. Ct. at 2354 ("[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.").

Appellants state claims 1 through 9 are not directed to an abstract idea and, in particular, "the subject matter of the instant application, as embodied

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in the claims, is directed to 'an enterprise scalable, data- and vendor-agnostic mobility architecture to securely deliver patient data and information from medical devices, electronic medical records (EMRs) and patient monitors to healthcare providers anywhere across a healthcare continuum.'" App. Br. 11 (citing Spec. ¶ 19).

      Appellants further argue:

> [T]he subject matter of the instant application, as embodied in the claims, is fundamentally rooted in computer technology. That is, and as noted above, the subject matter of the claims is directed to interacting with a user through a task screen on the mobile device, which includes a set of machine-readable instructions that governs the mechanisms of interaction between the user and the data processing device. Consequently, the subject matter of the claims is not directed to some fundamental truth or business practice that could have existed in the pre-Internet era. Indeed, it is the underlying technological features recited in the claims, the existence of which is required for the subject matter of the claims to itself even exist.

App. Br. 12.

      In response, the Examiner concluded "[t]he claims are directed to the abstract idea of determining and displaying icons that represent time-sensitive patient-associated tasks because they involve, in part, receiving a user input, processing user-specific data to determine patient icons representing time-sensitive patient-associated tasks, displaying patient icons with time-sensitive patient-associated tasks." Ans. 3. The Examiner further identified the correspondence of these aspects of the claimed invention to abstract ideas identified by the courts including comparing new and stored information and using rules to identify options (citing *SmartGene*), and

using categories to organize, store, and transmit information (citing *CyberFone*). *Id.*

> In the Final Action, the Examiner concluded:

> The claims are directed to the idea of receiving a user input command, processing user-specific data to determine patient icons representing time-sensitive patient associated tasks, displaying patient icons with time-sensitive patient-associated tasks, which is an example of the abstract idea of using categories to organize, store, and transmit information (because the limitations organize user input data into patient icons and transmit the icons for display). While the claims do not explicitly recite "using categories to organize, store, and transmit information", the concept is described by the receiving, processing, and displaying steps of claims 1, 8, and 9.

Final Act. 2–3.

Under the "abstract idea" step we must evaluate "the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs*, 838 F.3d at 1257 (citation omitted).

Turning to the claimed invention, claim 1 recites: "[a] computer-implemented method for providing a user of a mobile device access to patient information and patient physiological data, the method being executed using one or more processors." Claim 1 (preamble).

Method claim 1's limitations also require the steps of:

> (a) "receiving . . . user input . . . indicating a user command to display a task screen;

> (b) "in response . . . processing . . . data to determine a plurality of patient icons, each . . . representing a . . . patient-associated task comprising review and confirmation of the patient physiological data . . .;" and

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(c) displaying the task screen . . . [by] displaying the patient information and the patient physiological data."

Under step one, we agree with the Examiner that the inventions claimed in each of independent claims 1, 8 and 9 are directed to an abstract idea, i.e., comparing new and stored information and using rules to identify options, which we also conclude involves using categories to organize, store, display, and transmit information. *See* Ans. 3.

As the Specification discloses:

> Implementations of the present disclosure are generally directed to an enterprise scalable, data- and vendor-agnostic mobility architecture to securely deliver patient data and information from medical devices, electronic medical records (EMRs) and patient monitors to healthcare providers anywhere across a healthcare continuum. More particularly, implementations of the present disclosure provide integrated and unified views of patient data and patient information on mobile devices (e.g., smartphones, tablets) from a plurality of data sources across the healthcare continuum.

Spec. ¶ 19.[4] We find this type of activity, i.e., comparing information to identify options, includes longstanding conduct that existed well before the advent of computers and the Internet, and could be carried out by a human

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[4] *See also* Spec. 44 ("Abstract"):

> Implementations are directed to providing a user of a mobile device access to patient information and patient physiological data. Actions can include receiving user input, the user input indicating a user command to display a task screen, in response to the user input, processing user-specific data to determine one or more patient icons, each patient icon representing a time-sensitive, patient-associated task, and displaying the task screen on the mobile device, the task screen displaying one or more patient icon groups, each patient icon group including a patient icon of the one or more patient icons.

with pen and paper. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654
F.3d 1366, 1375 (Fed. Cir. 2011) ("That purely mental processes can be
unpatentable, even when performed by a computer, was precisely the
holding of the Supreme Court in *Gottschalk v. Benson*.").[5]

Our reviewing court has previously held other patent claims ineligible
for reciting similar abstract concepts. For example, while the Supreme
Court has enhanced the § 101 analysis since *CyberSource* in cases like *Mayo*
and *Alice*, the Court continues to "treat[ ] analyzing information by steps
people go through in their minds, or by mathematical algorithms, without
more, as essentially mental processes within the abstract-idea category."
Synopsys, Inc. v. Mentor Graphics Corp., 839 F.3d 1138, 1146–47 (Fed. Cir.
2016) (alteration in original) (quoting *Elec. Power Grp.*, 830 F.3d at 1354).

In addition, our reviewing court has concluded that abstract ideas
include the concepts of collecting data, recognizing certain data within the
collected data set, and storing the data in memory. *Content Extraction &
Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed.
Cir. 2014). Additionally, the collection of information and analysis of
information (e.g., recognizing certain data within the dataset) are also
abstract ideas. *Elec. Power*, 830 F.3d at 1353–54 (collecting information
and "analyzing information by steps people go through in their minds, or by
mathematical algorithms, without more, [are] essentially mental processes
within the abstract-idea category"). Similarly, "collecting, displaying, and
manipulating data" is an abstract idea. *Intellectual Ventures I LLC v.*

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[5] *CyberSource* further guides that "a method that can be performed by
human thought alone is merely an abstract idea and is not patent-eligible
under § 101." *CyberSource*, 654 F.3d at 1373.

Capital One Fin. Corp., 850 F.3d 1332, 1340 (Fed. Cir. 2017). Further, a

process that employs mathematical algorithms to manipulate existing

information to generate additional information is abstract. *Digitech Image*

Techs., LLC v. Elec. for Imaging, Inc., 758 F.3d 1344, 1351 (Fed.

Cir. 2014). Also, more recently, our reviewing court has also concluded that

acts of parsing, comparing, storing, and editing data are abstract ideas.

Berkeimer v. HP Inc., 881 F.3d 1360, 1367 (Fed. Cir. 2018).

> Appellants' argue:

>> [T]he subject matter of the instant application, as embodied in
>> the claims, is fundamentally rooted in computer technology.
>> That is, and as noted above, the subject matter of the claims is
>> directed to interacting with a user through a task screen on the
>> mobile device, which includes a set of machine-readable
>> instructions that governs the mechanisms of interaction between
>> the user and the data processing device. Consequently, the
>> subject matter of the claims is not directed to some fundamental
>> truth or business practice that could have existed in the pre-
>> Internet era. Indeed, it is the underlying technological features
>> recited in the claims, the existence of which is required for the
>> subject matter of the claims to itself even exist.

App. Br. 12.

> Regarding Appellants' preemption argument (App. Br. 14),

>> While preemption may signal patent ineligible subject
>> matter, the absence of complete preemption does not
>> demonstrate patent eligibility. . . . Where a patent's claims are
>> deemed only to disclose patent ineligible subject matter under
>> the Mayo framework, as they are in this case, preemption
>> concerns are fully addressed and made moot.
>> *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed.

Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359,

1362–63 (Fed. Cir. 2015) ("that the claims do not preempt all price

optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract").

Therefore, in agreement with the Examiner, we conclude claim 1 involves nothing more than comparing information to identify options— an abstract idea. *See Elec. Power Grp.*, 830 F.3d at 1354.[6] Accordingly, on this record, and under step one of *Alice*, we agree with the Examiner's conclusion the claims are directed to an abstract idea.

Alice Step 2—Inventive Concept

If the claims are directed to a patent-ineligible concept, as we conclude above, we proceed to the "inventive concept" step. For that step we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an "inventive concept" in the application of the ineligible subject matter' to which the claim is directed." *Affinity Labs*, 838 F.3d at 1258 (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

In applying step two of the *Alice* analysis, our reviewing court guides we must "determine whether the claims do significantly more than simply describe [the] abstract method" and thus transform the abstract idea into patentable subject matter. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014). We look to see whether there are any "additional features" in the claims that constitute an "inventive concept," thereby rendering the claims eligible for patenting even if they are directed to an abstract idea. *Alice*, 134 S. Ct. at 2357. Those "additional features" must be

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[6] Merely automating previously manual processing by using computers does not qualify as an eligibility-rejection-defeating improvement. *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044 (Fed. Cir. 2017).

more than "well-understood, routine, conventional activity." *Mayo*, 566
U.S. at 79.

Appellants argue:

> Appellant notes that the subject matter of the claims is
> rooted in computer technology in order to overcome problems
> specifically arising in the realm of providing patient
> information and patient physiological data to remotely located
> mobile devices, which qualifies claims 1, 8 and 9 as patent-
> eligible subject matter. *See, e.g., DDR Holdings, LLC v.
> Hotels.com, LP* (Fed. Cir. 2014). In short, the subject matter of
> claims 1, 8, and 9 is directed to a problem that is unique to
> providing patient information and patient physiological data to
> remotely located mobile devices, and the solution provided by
> claims 1, 8 and 9 "is tethered to the technology that created the
> problem." *See, e.g., Messaging Gateway Solutions, LLC v.
> Amdocs, Inc. et al.*, D. Del., 1-14-cv-00732 (April 15, 2015)[].

App. Br. 14.

We disagree because, while we find the technology implemented in
the claimed invention may be useful to solve a business problem, we also
find the additional elements are not a technological solution to a
technological problem, or a solution to a problem introduced by the
technology itself. *See Alice* Step 2 analysis, *infra*.

Moreover, in *DDR*, applicable to a *Mayo/Alice* **Step 1 abstract idea
analysis**, the claims at issue involved, *inter alia*, "web pages displays [with]
at least one active link associated with a commerce object associated with a
buying opportunity of a selected one of a plurality of merchants" (claim 1 of
US 7,818,399). The Federal Circuit found the claims in *DDR* to be patent-
eligible under step one of the *Mayo/Alice* test because "the claimed solution
is necessarily rooted in computer technology in order to overcome a problem

specifically arising in the realm of computer networks." *DDR Holdings*, 773 F.3d at 1257. Specifically, the Federal Circuit found the claims addressed the "challenge of retaining control over the attention of the customer in the context of the Internet." *Id*. at 1258. We find the rejected claims are dissimilar to DDR's web page with an active link, and the Specification does not support the view that the computer related claim elements are unconventional. *See* Spec. ¶¶ 21–25 and 120–121.

Evaluating representative claim 1 under step 2 of the *Alice* analysis, we agree with the Examiner that it lacks an inventive concept that transforms the abstract idea of comparing information and using rules to identify options into a patent-eligible application of that abstract idea. *See* Ans. 4–6.

We agree because, as the Examiner concludes, when considering the claims as a whole:

> The computer as recited is a generic computer component that performs functions (i.e. receiving user input, processing user-specific data, displaying tasks and icons). These are generic computer functions that are well-understood, routine, and conventional activities previously known to the industry. The additional elements include a processor, display screen, mobile device, memory, and CRM, which are recited at a high level of generality and do not add meaningful limitations to the abstract idea beyond generally linking the system to a particular technological environment, that is, implementation via computers. Additionally, receiving user input and displaying a task screen with patient icon groups are merely extra-solution and/or post solution activity that does not meaningfully limit the claims. Using patient information to display tasks that are time-sensitive is merely limiting the claims to a particular field of use.

Ans. 4.

> The Examiner also finds:

> Furthermore, the as-filed specification discloses the mobile
> device can include a mobile phone, a smartphone, a tablet
> computing device, a personal digital assistant (PDA), a laptop
> personal computer (PC), a desktop PC. A display can include a
> thin-film-transistor (TFT) liquid crystal display (LCD), or an
> organic light emitting diode (OLED) display. A memory can
> include a volatile memory unit or units, and/or a non-volatile
> memory unit or units. An input interface can include a
> keyboard, a touchscreen, a mouse, a trackball, a microphone, a
> touchpad (¶ 0022–0023). This is further evidence that the
> Applicant does not consider the computer functions and/or
> components themselves to be the invention, rather the abstract
> idea of determining and displaying icons that represent time-
> sensitive patient-associated tasks. Therefore, the claims do not
> amount to significantly more that the underlying abstract idea.

Ans. 4–5.

> With respect to the Examiner's finding above, and as further evidence
of the conventional nature of the claimed network components and
processes, we point to Appellants' Specification in paragraphs 21–25
and 120–121.

> Notwithstanding Appellants' arguments, we agree with the Examiner
that the claim limitations may be broadly but reasonably construed as
reciting conventional computer components and techniques, particularly in
light of Appellants' Specification, as cited above.[7]

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[7] During prosecution, claims must be given their broadest reasonable
interpretation when reading claim language in light of the specification as it
would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of
Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under this standard,
we interpret claim terms using "the broadest reasonable meaning of the

Thus, with respect to the *Step 2* analysis, we agree with the Examiner because, as in *Alice*, the recitation of either a "computer-implemented method for providing a user of a mobile device access to patient information and patient physiological data, the method being executed using one or more processors" (claim 1); a "non-transitory computer-readable storage device coupled to one or more processors and having instructions stored thereon which, when executed by the one or more processors, cause the one or more processors to perform operations for providing a user of a mobile device access to patient information and patient physiological data" (claim 8); or a "system, comprising [] one or more processors" and a "computer-readable storage medium" is simply not enough to transform the patent-ineligible abstract idea here into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2357 ("[C]laims, which merely require generic computer implementation, fail to transform [an] abstract idea into a patent-eligible invention.").

Our reviewing court has held, "the use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter." *FairWarning IP v. Iatric Sys. Inc.*, 839 F.3d 1089, 1096 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014)).

Accordingly, based upon the findings above, on this record, we are not persuaded of error in the Examiner's conclusion that the appealed claims are directed to patent-ineligible subject matter. Therefore, we sustain the

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words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Examiner's § 101 rejection of independent claim 1, and grouped claims 2–9, not argued separately, and which fall therewith. *See* Claim Grouping, *supra*.

2. § 103 Rejection R2 of Claims 1–9

Issue 2

Appellants argue (App. Br. 15–19; Reply Br. 5–6) the Examiner's rejection of claim 1 under 35 U.S.C. § 103(a) as being obvious over the combination of Bello, Reyes, and Humphrys is in error. These contentions present us with the following issue:

Did the Examiner err in finding the cited prior art combination teaches or suggests "[a] computer-implemented method for providing a user of a mobile device access to patient information and patient physiological data, the method being executed using one or more processors," that includes, *inter alia*:

>(a) "receiving . . . user input indicating a user command to display a task screen";
>
>(b) "determine a plurality of patient icons, each patient icon representing a time-sensitive, patient-associated task comprising review and confirmation of the patient physiological data that is updated in real-time"; and
>
>(c) "one or more patient icon groups that are differentiated based on an urgency of the time-sensitive, patient-associated task, each patient icon group comprising a patient icon of the plurality of patient icons,"

as recited in claim 1?

Analysis

The test for obviousness is what the combined teachings of the prior art would have suggested to the hypothetical person of ordinary skill in the

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art. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Appellants have not challenged the combinability of the teachings of Bello, Reyes, and Humphrys.

"Receiving" Limitation (a)[8]

The Examiner finds the "receiving" limitation is taught or suggested by Bello. Final Act. 4 (citing Bello Fig. 24; ¶ 439); *and see* Ans. 7 (additionally citing Bello ¶ 438).

Appellants contend "the interface screen of Bello allows a clinician to add or remove patients, which is different than receiving, by the one or more processors, user input, the user input indicating a user command to display a task screen, as recited in claims 1, 8, and 9." App. Br. 17–18.

In response, the Examiner finds:

> Bello discloses after a clinician selects a shift, interpreted as user input, a "to-do" list is provided based on patients, the clinician's tasks or both. Different levels of shading and/or coloring may be utilized to differentiate between the levels of urgent care required for a specific patient. Additionally, various icons may be used in connection with the patients to provide the clinician a quick understanding of the care required by a patient (¶ 438).

Ans. 7.

In the Reply Brief, Appellants assert "the visual indicators of Bello are utilized to differentiate between the level of urgent care required for a specific patient, which is different than displaying the task screen on the mobile device." Reply Br. 5.

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[8] Limitation (a): "receiving, by the one or more processors, user input, the user input indicating a user command to display a task screen."

We disagree with Appellants' assertion under the broadest reasonable interpretation standard. *See* n.7.

In this case, Appellants have not rebutted the Examiner's interpretation that the claimed "user command to display a task screen" reads on Bello's clinician selection of a shift on patient interface screen 2313. Specifically, and in agreement with the Examiner, we find Bello discloses:

> A view patient interface screen **2313** is shown in FIG. 23. In that screen **2313**, after the shift has been selected, the clinician **116** may view the patients associated with the clinician **116**. *The clinician 116 may also view the tasks associated with the clinician 116.* Accordingly, a "to-do" list may be provided based on the patients, the clinician's tasks or both.

Bello ¶ 438 (emphasis added).

Thus, we agree with the Examiner's finding above that Bello teaches or at least suggests the recited "receiving" limitation as recited in claim 1.

"Plurality of Patient Icons" and "Icon Groups" Limitations (b)/(c)[9]

Appellants contend "[a]t least the cited portions of Reyes fail to disclose or render obvious each patient icon representing a time-sensitive, patient-associated task including review and confirmation of the patient physiological data that is updated in real-time." App. Br. 18.

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[9] Limitation (b): "in response to the user input, processing, by the one or more processors, user-specific data to determine a plurality of patient icons, each patient icon representing a time-sensitive, patient-associated task comprising review and confirmation of the patient physiological data that is updated in real-time to be remotely executed by the user within a time period that is determined based on a time at which the patient physiological data started to be recorded."

We disagree with Appellants' argument because it is not responsive to the Examiner's rejection and Response to Arguments in the Answer. Final Act. 4–5; Ans. 8.

The Examiner relies upon the *combination* of Bello and Reyes as teaching or suggesting this limitation. In particular, the Examiner cites Bello as teaching or suggesting "each patient icon representing a time-sensitive, patient-associated task" (Final Act. 4–5), and cites Reyes as teaching or suggesting "the task comprising review and confirmation of the patient physiological data, the task screen displaying the patient physiological data," and also "a display of a group of patient icons, where a physician selects a patient icon to review and confirm displayed patient vital signs." Ans. 5 (citing Reyes Figs. 2, 3; ¶¶ 13, 49, and 69).[10] We agree with the Examiner's findings. *See* n.10.

Thus, we agree with the Examiner's finding above that Bello teaches or at least suggests the recited "plurality of patient icons" and "group icons" limitations as recited in claim 1.

Therefore, based upon the findings above, on this record, we are not persuaded of error in the Examiner's reliance on the cited prior art

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[10] "Active appointments, as well as, pending and completed appointments represented collectively herein as indicia **205** may be physically characterized by interactive boxes, windows, or icons displayed within electronic interface **126**. In one embodiment an icon **205** may list some information as text, such as the patient's name, gender and age, and the date and time for the session." Reyes ¶ 49. Also, "[a]t step **313**, the physician may select the icon associated with pre-evaluation or vitals to review the data before accepting the appointment. The physician may also access other information from other information sources connected to the network and review such data before accepting an appointment." Reyes ¶ 69.

combination to teach or suggest the disputed limitations of claim 1, nor do we find error in the Examiner's resulting legal conclusion of obviousness. Therefore, we sustain the Examiner's obviousness rejection of independent claim 1, and grouped claims 2–9 which fall therewith. *See* Claim Grouping, *supra*.

REPLY BRIEF

To the extent Appellants *may* advance new arguments in the Reply Brief (Reply Br. 1–6) not in response to a shift in the Examiner's position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief or are not responsive to arguments raised in the Examiner's Answer will not be considered except for good cause (*see* 37 C.F.R. § 41.41(b)(2)), which Appellants have not shown.

CONCLUSIONS

(1)   The Examiner did not err with respect to patent-ineligible subject matter Rejection R1 of claims 1–9 under 35 U.S.C. § 101, and we sustain the rejection.

(2)   The Examiner did not err with respect to obviousness Rejection R2 of claims 1–9 under 35 U.S.C. § 103(a) over the cited prior art combination of record, and we sustain the rejection.

DECISION

We affirm the Examiner's decision rejecting claims 1–9.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED