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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT WARTENFELD, ZIV OFEK, EYAL GREENBERG,
ZIV GOME, and SHIRI BEN-TAL

Appeal 2017-002135
Application 13/208,417¹
Technology Center 3600

Before BRUCE T. WIEDER, AMEE A. SHAH, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 3–5, and 7–11. We have jurisdiction under 35 U.S.C. § 6(b). Oral arguments were presented December 6, 2018.

We AFFIRM.

¹ According to Appellants, the real party in interest is Allscripts Healthcare Solutions, Inc. (Appeal Br. 3.)

CLAIMED SUBJECT MATTER

Appellants’ “invention relates generally to systems for processing medical information and more particularly to computerized interactions with EMRs [electronic medical records].” (Spec. 1, ll. 14–15.)²

Claim 1 is the sole independent claim on appeal. It recites:

1. A method of providing health information from a health information exchange (HIE) system, the method comprising:

(a) storing patient records, including patient record data, regarding a multiplicity of patients, the patient record data coming from a plurality of disparate health information system sources, wherein the HIE system serves a plurality of EMR systems, each EMR system interacting with an EMR community including at least one EMR application running on a computerized device for use by a health provider; and

(b) for each individual EMR system within said plurality of EMR systems, providing health information from the HIE system to a health provider within the context of the EMR application running on the computerized device within the individual EMR system by,

(i) performing, by an HIE-EMR bridging application running on a computerized device used by a health provider on which an EMR application is also running, a computerized context interception process using a processor to intercept context from the individual EMR system and to identify therewithin an event by which the health provider using the EMR application running on the computerized device calls up an individual patient’s record from said individual EMR system; and

(ii) responsive to identification of said event, providing to the health provider, by the HIE-EMR bridging application running on the computerized device

² Citations to “Spec.” refer to the substitute Specification filed October 25, 2011. Additionally, we note that in two related appeals, i.e., Appeals 2017-007366 (Application 14/145,903) and 2018-007831 (Application 12/840,806), opinions issued on November 30, 2018.

used by the health provider on which the EMR application is also running, health information from the HIE system including patient record data pertaining to the individual patient of the identified event,

(iii) wherein said patient record data includes at least one information item which is tagged to indicate a source health information system from which said at least one information item is provided to said HIE system, and wherein said patient record data provided to the health provider is filtered so as to filter out said at least one information item if the health information system source is said individual EMR system; and

(iv) wherein said EMR application provides information to the health provider through a graphic user interface in a first display window generated by the EMR application, wherein the HIE-EMR bridging application provides said patient record data to the health provider through a graphic user interface of a second display window that is separate from the first display window and that is generated by the HIE-EMR bridging application; and wherein the second display window containing the graphic user interface of the HIE-EMR bridging application is displayed relative to, and on top of, the display window containing the graphic user interface of the EMR application.

REJECTIONS

Claims 1, 3–5 and 7–11 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1, 3–5 and 7–11 are rejected under 35 U.S.C. § 103(a) as unpatentable in view of Mahesh (US 2006/0074633 A1, pub. Apr. 6, 2006), Hasan (US 2009/0177492 A1, pub. July 9, 2009), and Brummel (US 2002/0083075 A1, pub. June 27, 2002).

ANALYSIS

The § 101 rejection

“Whoever 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 therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. Section 101, however, “contains an important implicit exception: Laws 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 *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

Alice applies a two-step framework, earlier set out in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355.

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* If the claims are determined to be directed to a patent-ineligible concept, e.g., an abstract idea, then the second step of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 2357 (citing *Mayo*, 566 U.S. at 72–73, 79).

With regard to step one of the *Alice* framework, the Examiner determines that claim 1 is “drawn to an abstract idea, that abstract idea being a basic concept of providing healthcare.” (Final Action 2.) The Examiner

also determines that claim 1 is “directed to the abstract idea of using categories to organize, store and transmit information.” (Answer 14.)

Appellants disagree and argue that “the claims include additional features that ensure that the claims are not a drafting effort designed to monopolize either the idea of ‘a basic concept of providing healthcare’ or the idea of ‘using categories to organize, store, and transmit information’.” (Reply Br. 5, emphasis omitted.)

We defer our consideration of the specific claim limitations’ narrowing effect for step two of the *Alice* framework. See *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016).

Step two of the *Alice* framework has been described “as a 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.’” *Alice*, 134 S. Ct. at 2355 (citing *Mayo*, 566 U.S. at 72–73).

The Examiner determines that Appellants’ claims merely recite a generic computer component that performs functions (i.e., storing patient records ..., providing health information ..., performing a computerized context interception process ..., and providing to the health provider ... health information ...). These are all generic computer functions (i.e., storing, providing, performing and providing) that are well-understood, routine, and conventional activities previously known to the healthcare industry. The claim also recites a health information exchange (HIE) system, a plurality of EMR systems, at least one EMR application, and an HIE-EMR bridging application, which do NOT add meaningful limitations to the idea of using categories to organize, store and transmit information.

(Answer 15–16.)

Appellants disagree and argue

that the claims recite more than the performance of routine and conventional activities previously known to the industry. In particular, as noted hereinabove, a claim recites a novel methodology involving “performing, by an HIE/EMR bridging application running on a computerized device used by a health provider on which an EMR application is also running, a computerized context interception process using a processor to intercept context from the individual EMR system and to identify therewithin an event by which the health provider using the EMR application running on the computerized device calls up an individual patient's record from said individual EMR system”.

(Reply Br. 7, emphasis omitted.)

Whether “performing, by an HIE/EMR bridging application running on a computerized device used by a health provider on which an EMR application is also running, a computerized context interception process using a processor to intercept context from the individual EMR system” is a well-understood, routine, and conventional activity is a question of fact. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) (“Whether something is well-understood, routine, and conventional to a skilled artisan . . . is a factual determination.”). Moreover, “[t]he mere fact that something is disclosed in a piece of prior art, for example, does not mean it was well-understood, routine, and conventional.” *Id.* at 1369. Here, the Examiner has not provided sufficient evidence to support a finding that these steps were well-understood, routine, or conventional to a skilled artisan. Therefore, we will reverse the rejection of claim 1. For the same reasons we will also reverse the rejection of dependent claims 3–5 and 7–11.

The § 103(a) rejection

In relevant part, claim 1 recites (emphasis added):

performing, by an HIE-EMR bridging application . . . , a computerized context interception process using a processor to *intercept context* from the individual EMR system and to identify therewithin an event by which the health provider using the EMR application . . . calls up an individual patient's record from said individual EMR system.

The Examiner finds that this limitation is disclosed by Mahesh in paragraph 15, 19, 20, 23, and 28. (Final Action 4.)

Appellants disagree and argue that

the Examiner states that a system of Mahesh “includes a context manager for obtaining information from [a] plurality of information sources based on a query”. Applicant notes, however, that a methodology involving obtaining information from an information source *via a query* is in clear contrast to the explicit recitation of obtaining context via *interception*, which recitation is supported in the Specification of the present application by elaborate description of context interception methodologies.

Applicant also notes that this is not an insignificant difference, as a methodology such as the one disclosed in Mahesh which involves obtaining information from an information source based on a query requires that *the information source be configured to respond to such a query*, whereas a recited HIE-EMR bridging application can be utilized with EMR applications which *are not configured to provide any context information to an external source in response to a query*, as the bridging application can simply *intercept* context from the EMR applications.

(Appeal Br. 9; *see also* Reply Br. 3–5.) We note that Appellants provide no citation to the Specification to support this argument.

Mahesh discloses “a method and system for improved diagnostic reading and workflow in a healthcare environment using rules-based context

management.” (Mahesh, Abstract.) In particular, Mahesh discloses “retrieving information from at least one of the information systems based on a request, and filtering the information based on at least one rule.” (*Id.* ¶ 22.) Mahesh also discloses “a method for providing rules-based context management in a healthcare environment includ[ing] creating at least one context for retrieving information from at least one information source, defining set [sic] of at least one rule for processing information, and allowing retrieval of information in the context(s) using the rule(s).” (*Id.* ¶ 23.) In short, Mahesh discloses at least obtaining information from an information source based on a request/query.

We now construe the claim term “intercept context.” Appellants’ Specification defines “context” as “includ[ing] information which may be shared by or derived from a computerized system such as an EMR.” (Spec. 27, ll. 13–14.) Appellants’ Specification also provides the following definition:

“context interception” – obtaining, for a first computerized system such as a HIES [health information exchange system] context from a second computerized system such as an EMR, e.g., by sharing or deriving, typically including a determination of how the information from the second computerized system is to be used or related to by the first computerized system.”

(*Id.* at 27, ll. 18–21; *see also id.* at ll. 2–4.³) This definition does not exclude obtaining context through a query. Applying a broadest reasonable

³ We note that the decision in the appeal of application 14/145,903 discussed the claim term “context interception.” (*See* Decision in Appeal 2017-007366, mailed Nov. 30, 2018, at 8.) We also note that the Specification in that application did not include this definition of the term “context interception.” Claims are construed in light of the specification. *In*

interpretation, we conclude that the term “context interception” does not exclude obtaining, by query, “for a first computerized system . . . context from a second computerized system.” (*See* Spec. 27, ll. 18–19.) Appellants do not point to any language in the Specification or elsewhere to persuade us that the claim term “intercept context” should be construed differently from the term “context interception.” Indeed, claim 1 recites a “context interception process using a processor to intercept context.”

Nor are we persuaded by Appellants argument that

obtaining information from an information source based on a query requires that the information source be configured to respond to such a query, whereas a recited HIE-EMR bridging application can be utilized with EMR applications which are not configured to provide any context information to an external source in response to a query.

(Appeal Br. 9, emphasis omitted.) Appellants do not point to language in claim 1 requiring that EMR applications not be configured to provide context information to an external source in response to a query.

Appellants also argue that the cited references do not disclose the claimed context interception process, i.e., interception of context/information and “identification [within the obtained information] of an event by which a health provider using an EMR application calls up an

re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004), quoting *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990) (“During examination, ‘claims . . . are to be given their broadest reasonable interpretation consistent with the specification, and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.’”) In this case, and in view of this difference in the specifications, i.e., the explicit definition here, the construction of the claim term “context interception” is also different.

individual patient’s record.” (Appeal Br. 10.) However, Appellants do not persuasively argue *why* the Examiner’s finding that this limitation is taught by the cited art is in error. (See Answer 13.) Moreover, we note that Mahesh discloses obtaining information, i.e., intercepting context, from an information source (*see, e.g.*, Mahesh ¶¶ 19, 23), filtering the information based on a rule, i.e., identifying an event within the information (*see, e.g., id.*), and calling up/retrieving additional information (*see, e.g., id.* ¶ 23). Mahesh also discloses that the disclosed invention can be “integrated into a single unit,” i.e., a single device. (*Id.* ¶ 28).

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1 under § 103(a). Appellants “submit[] that claims 1, 3-5, and 7-11 stand or fall together, with independent claim 1 being representative of this grouping.” (Appeal Br. 7.) Therefore, dependent claims 3–5 and 7–11 fall with claim 1.

DECISION

The Examiner’s rejection of claims 1, 3–5 and 7–11 under 35 U.S.C. § 101 is reversed.

The Examiner’s rejection of claims 1, 3–5 and 7–11 under 35 U.S.C. § 103(a) 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED