UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/391,130	02/23/2009	Judith R. Faulkner	E09130US (1517.046)	6456

91065   7590   05/16/2018
Epic
c/o Boyle Fredrickson S.C.
840 North Plankinton Avenue
Milwaukee, WI 53203

EXAMINER
NG, JONATHAN K

ART UNIT	PAPER NUMBER
3686	

NOTIFICATION DATE	DELIVERY MODE
05/16/2018	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUDITH R. FAULKNER, CARL D. DVORAK, BRIAN M.
WEISBERGER, JANET L. CAMPBELL, TIMOTHY W. ESCHER,
DUSTIN L. GAGE, SEAN CONRAD, BHAVIK SHAH,
MICHAEL J. KANTOR, and MATTHEW D. SIDNEY[1]

Appeal 2017-002176
Application 12/391,130
Technology Center 3600

Before CARLA M. KRIVAK, CAROLYN D. THOMAS, and
PHILLIP A. BENNET, *Administrative Patent Judges*.

THOMAS, *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 1–11 and 13–21, all the pending
claims in the present application. Claim 12 is canceled. *See* Claims
Appendix. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

The present invention relates generally to a healthcare portal aggregator that collects data from healthcare portals to provide patients with a comprehensive view of their healthcare information. *See* Abstract.

Claim 1 is illustrative:

1. A health data portal aggregator comprising:
at least one electronic computer electronically connected to a computer network communicating with at least two health data portals, each portal providing access by a patient to clinical records of the patient from electronic medical record systems associated with a single corresponding healthcare institution, the electronic computer executing a stored program to:
(a) receive authentication information from a patient;
(b) retrieve stored access information for the health data portals based on the authentication information, the stored access information including unique access information for each health data portal generated by an administrator of that health data portal:
use the authentication information together with unique access information for the health data portals to collect clinical records from the electronic medical record systems of the healthcare institutions over the computer network, the clinical records providing clinical medical data having datatypes and including an identification of a healthcare provider that created the clinical medical data based on interaction with the patient;
(c) display the clinical medical data visually aggregated by datatypes; and
(d) visually associate the visually aggregated clinical medical data with information identifying the healthcare institutions sourcing the clinical medical data, the healthcare institution being different from the healthcare provider;
wherein the stored program further uses the authentication information to request and receive appointment information from at least two health data portals, each portal corresponding to a different healthcare institution; the appointment information including a listing of previously scheduled upcoming appointments at the corresponding healthcare institutions,

wherein the appointment data is visually aggregated by an appointment time and visually associated with information identifying the healthcare institutions related to the appointments.

Appellants appeal the following nine (9) rejections:

R1. Claims 1–11 and 13–21 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter (Final Act. 2–3);

R2. Claims 1, 2, 5–9, 14, and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mok (US 7,647,320 B2, Jan. 12, 2010), Urali (US 2008/0109361 A1, May 8, 2008), Robinson (US 2007/0185797 A1, Aug. 9, 2007), and Wheeler (US 2005/0261942 A1, Nov. 24, 2005) (Final Act. 4–13);

R3. Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mok, Urali, Robinson, Wheeler, and Nawaz (US 5,959,621, Sept. 28, 1999) (Final Act. 14);

R4. Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mok, Urali, Robinson, Wheeler, Nawaz, Wizig (US 7,899,689 B1, Mar. 1, 2011) (Final Act. 15–16);

R5. Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mok, Urali, Robinson, Wheeler, Patterson (US 2006/0259324 A1, Nov. 16, 2006) (Final Act. 16);

R6. Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mok, Urali, Robinson, Wheeler, Hasan (US 7,428,494 B2, Sept. 23, 2008) (Final Act. 17);

R7. Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mok, Urali, Robinson, Wheeler, Crici (US 2005/0027580 A1, Feb. 3, 2005) (Final Act. 18);

R8. Claim 16–18 rejected under 35 U.S.C. § 103(a) as being unpatentable over Mok, Urali, Robinson, Wheeler, Sidney (US 2006/0117021 A1, June 1, 2006) (Final Act. 19–20); and

R9. Claim 19–21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mok, Urali, Robinson, Wheeler, Smitherman (US 2006/0129435 A1, June 15, 2006) (Final Act. 21–22).

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

ANALYSIS

Rejection under § 101

Issue 1: Did the Examiner err in finding that the claims are directed to non-statutory subject matter?

Alice Corp. Pty. Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101. According to *Alice* step one, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept," such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

In this regard, with respect to independent apparatus claims 1 and 15, the Examiner finds that the claims are directed to "the abstract idea of aggregating and organizing patient data from different sources . . . because it is analogous to comparing new and stored information and using rules to identify options" (Final Act. 2; *see also* Ans. 2). The Examiner adds that

"this information is intangible and therefore, collecting information, including when limited to particular content (which does not change its character as information), is within the realm of abstract ideas" (Ans. 3, citing *Classen, CyberSource, Content Extraction*, and *SmartGene*). The Examiner further finds that "the claims in question are unlike the claims in *Enfish* . . . Here, . . . the focus of the claims are on abstract ideas that use computers as tools and not on an improvement in computers as tools" (Ans. 3–4).

Appellants challenge said findings on two grounds: (a) the claims are tied to a specific application, i.e., medical records, that does not preempt; and (b) the Examiner's findings ignore specific limitations.

Regarding (a), Appellants contend that "the use of the clinical medical records . . . is in no way a generic use of the abstract . . . [and is tied] to a specific application [that] does not preempt its use in general" (App. Br. 13).

Even assuming this is true (without deciding), the fact that the claim may not preempt a particular abstract idea does not make the claim patent eligible. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) ("While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility."); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) ("[T]hat 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."). In other words, we find unavailing Appellants' contention that their claims do not preempt as absence of preemption does not demonstrate patent eligibility.

Regarding (b), Appellants contend that "the Examiner's description of the claims . . . ignores all of the specific limitations of the claims and ignores the requirement that the specific limitations must be well-understood, routine and conventional" (App. Br. 13; *see also id.* at 16).

We find the Examiner properly and reasonably found that claim 1 is directed to "aggregating and organizing patient data from different sources" (Ans. 2), which is an abstract idea. Under the first step of the *Alice* framework, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept," such as an abstract idea. *Alice*, 134 S. Ct. at 2355. However the concept is described, Appellants have not adequately shown that claim 1 is not directed to an abstract idea. That the claim includes more words than the phrase the Examiner uses as an articulation of the abstract idea is insufficient for persuasively arguing that claim 1 is not directed to an abstract idea.

We note that claim 1 recites a health data portal aggregator including a computer for performing four steps: (1) receive authentication information; (2) retrieve stored access information; (3) display the clinical medical data; and (4) visually associate medical data with healthcare institutions. These four steps present a scheme for integrating separately maintained health records with associated institutions, i.e., "aggregating and organizing patient data from different sources."

Information collection and analysis, including when limited to particular content, is within the realm of abstract ideas. *See, e.g., Elec. Power Grp. LLC 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"); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); and *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011). Because the instant claims are directed to collecting information, analyzing it, correlating it, and providing it to users, we agree with the Examiner that claim 1 is directed to an abstract idea.

We now turn to the second step of the *Alice* framework: "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 Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)).

Appellants contend that "medical records are a special type of data that is traditionally tightly held . . . [and the claims include] unconventional steps that confine the claim to a particular useful application specific to electronic medical records" (App. Br. 15). Appellants further contend that "the Examiner has not shown that the present claims do **no more** than his generic interpretation as was found in the *Smartgene* [sic] case" (App. Br. 16).

The Examiner finds, and we agree, that in the claims "this information is intangible and therefore, collecting information, including when limited to particular content (which does not change its character as information), is within the realm of abstract ideas" (Ans. 3), and there is "not any particular assertedly inventive technology for performing those functions" (*id.*)

because the claims "use computers as tools and not [as] an improvement in computers" (*id.* at 4).

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." *See Alice*, 134 S. Ct. at 2359 (concluding claims "simply instruct[ing] the practitioner to implement the abstract idea of intermediated settlement on a generic computer" not patent eligible); *see also Ultramercial*, 772 F.3d at 715–16 (claims merely reciting abstract idea of using advertising as currency as applied to particular technological environment of the Internet not patent eligible); *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); and *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" (internal citation omitted)). Here, Appellants fail to persuasively rebut the Examiner's finding that generic components are being used merely as tools to implement the abstract idea.

Similarly, our reviewing court found that the claims at issue in *SmartGene* were patent ineligible because they did "no more than call on a 'computing device,' with basic functionality for comparing stored and input data and rules, to do what doctors do routinely." *SmartGene*, 555 Fed. Appx. at 954. We agree with the Examiner that, in the instant case,

"[n]othing in the claims . . . requires anything other than off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information" (Ans. 4).

In other words, the claimed steps do not rely on an inventive device or technique for displaying information or new techniques for analyzing information, but rather constitute "'a set of generic computer components' and display devices" (*id.*). The instant facts are also similar to those in *SmartGene* because the claims at issue in *SmartGene* relied upon "expert rules" for "'evaluating and selecting' from a stored 'plurality of different therapeutic treatment regimens.'" *SmartGene*, 555 Fed. Appx. at 951–952. The "expert rules" in *SmartGene* are analogous to using "the authentication information together with unique access information" to "collect clinical records" in claim 1. In neither *SmartGene* nor the instant claims is there any evidence of record that specific rules or factors were/are required. The claims thus encompass the use of any rule or factor known or desired for use in the computing device.

Because Appellants' independent claims 1 and 15 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 as well as respective dependent claims 2–11, 13, 14, and 16–21 under 35 U.S.C. § 101 as being directed to non-statutory subject matter in light of *Alice* and its' progeny.

For the foregoing reasons, Appellants' contentions are unpersuasive as to error in the rejection under 35 U.S.C. § 101.

Rejection under § 103(a)

Issue 2: Did the Examiner err in finding that the combined teachings of the cited references teach or suggest receiving information from at least two healthcare portals, each portal corresponding to a different healthcare institution, as set forth in claim 1?

Appellants contend that Wheeler "is directed to a patient check in kiosk for a medical facility and clearly only accesses local information . . . and does not teach accessing records at different healthcare facilities" (App. Br. 18). Appellants further contend that "[n]othing in Wheeler teaches or suggests that any of these databases are associated with different healthcare institutions . . . are accessed to aggregate data . . . requiring different authentications to access this data" (*id.* at 19), rather Wheeler teaches an "interface with various types of single databases" (*id.*).

In response, the Examiner finds that "one cannot show nonobviousness by attacking references individually . . . [because at least] [t]he combination of Robinson and Wheeler was used to teach multiple databases associated with different facilities are accessed to aggregate data from multiple databases requiring different authentications" (Ans. 5). We agree with the Examiner.

Appellants' argument against Wheeler separately from the other cited art does not persuasively rebut the combination made by the Examiner. One cannot show non-obviousness by attacking references individually, where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425–26 (CCPA 1981).

For example, the Examiner finds Robinson teaches "providing authentication information to log into a user data account aggregation system" (Final Act. 7, *citing* Robinson ¶¶ 46, 47, and 51; *see also* Ans. 5) and Wheeler teaches "consolidating medical data" and accessing "various medical record networks, or portals" (*id.* at 8, *citing* Wheeler ¶¶ 36, 37 and claim 2; *see also* Ans. 5–6, citing ¶¶ 6–9 and Fig. 1). Furthermore, the Examiner finds that Urali teaches both "an aggregator may sign in to multiple health record portals to aggregate a patient's health records" (Final Act. 6, *citing* Urali ¶¶ 66 and 221) and "a user can require identity verification" (*id.*, *citing* Urali ¶ 227) and Mok teaches receiving authentication information, identification of a healthcare provider, and visually aggregating datatypes (*id.* at 4–5).

In other words, at least the combined teachings of Robinson and Wheeler teach or suggest using authentication information to receive information from at least two health data portals, each portal corresponding to a different healthcare institution. Thus, we find unavailing Appellants' contention that Wheeler fails to teach or suggest the argued limitations given that the Examiner relied upon the combined teachings.

Accordingly, we sustain the Examiner's rejection of claim 1. Appellants' arguments regarding the Examiner's rejection of independent claim 15 rely on the same arguments as for claim 1, and Appellants do not argue separate patentability for the dependent claims. We, therefore, also sustain the Examiner's rejection of claims 2–11 and 13–21.

11

DECISION

We affirm the Examiner's § 101 rejection R1 of claims 1–11 and 13–21.

We affirm the Examiner's § 103(a) rejections R2–R9 of claims 1–11 and 13–21.

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