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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALEKSANDRA TESANOVIC,
JAN JOHANNES GERARDUS DE VRIES,
and GIJS GELEIJNSE

Appeal 2017-003452
Application 13/909,779¹
Technology Center 3600

Before ANTON W. FETTING, BRUCE T. WIEDER, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE²

Aleksandra Tesanovic, Jan Johannes Gerardus De Vries, and
Gijs Geleijnse (Appellants) seek review under 35 U.S.C. § 134 of a final
rejection of claims 1, 3, and 6–12, the only claims pending in the application

¹ According to Appellants, the real party in interest is Koninklijke Philips
N.V. (App. Br. 2).

² Our Decision will make reference to the Appellants' Appeal Brief ("App.
Br.," filed September 28, 2016) and Reply Brief ("Reply Br.," filed
December 19, 2016), and the Examiner's Answer ("Ans.," mailed November
3, 2016), and Final Office Action ("Final Act.," mailed May 2, 2016).

on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellants invented a way of determining care for a patient. Spec. 1:2–4.

An understanding of the invention can be derived from a reading of exemplary claim 12, which is reproduced below (bracketed matter and some paragraphing added).

12. A healthcare support method for determining care for a patient comprising the steps of:

[1] obtaining patient data;

[2] assessing a clinical need of the patient;

[3] proposing a desired clinical outcome;

[4] determining at least one service to be provided to the patient for the clinical need and the proposed clinical outcome;

[5] determining at least one clinical side effect resulting from each service;

[6] creating a service-outcome-need model, wherein the service-outcome-need model provides a relationship between the service provided to the patient, the proposed clinical outcome, the clinical need of the patient, each clinical side effect, and a certainty measure for the proposed clinical outcome and each clinical side effect;

and

[7] creating a service database based on patient data wherein for each service there is an instance of the service-outcome-need model;

[8] filtering the service database using a plurality of patient-specific parameters derived from the patient data such that an optimal service is identified, the patient-specific parameters comprising:

a current care location, wherein the current care location is one of a hospital, an out patient clinic, a general practitioner, a nursing home, or the patient's home;

a target care location, wherein the target care location is one of a hospital, an out patient clinic, a general practitioner, a nursing home, or the patient's home;

ineffective services previously applied to the patient;

effective services previously applied to the patient;

a maximum cost, the maximum cost being derived from the patient's financial situation and insurance status;

and

an educational need comprising the capacity to provide self-care;

and

[9] determining an optimal service.

The Examiner relies upon the following prior art:

Ennett US 2009/0094063 A1 Apr. 9, 2009

Morris US 2010/0198571 A1 Aug. 5, 2010

Utterback US 2011/0137670 A1 June 9, 2011

Rhine-Pallas US 2012/0035958 A1 Feb. 9, 2012

Claims 1, 3, and 6–12 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1, 3, 6, and 8–12 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Utterback, Morris, and Rhine-Pallas.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Utterback, Morris, Rhine-Pallas, and Ennett.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

The issues of obviousness turn primarily on whether the art describes using current and target locations as service database filter criteria.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Utterback

01. Utterback is directed to clinical care of a patient and, more particularly, facilitating development and execution of a clinical care plan. Utterback para. 1.
02. Utterback describes automatic determination of one or more problems facing a patient and generation of a care plan to address the determined care problems based on patient assessment data. Utterback para. 4.

Morris

03. Morris is directed to techniques useful in computers for associating intervention data with simulated healthcare processes. Morris para. 2.

Rhine-Pallas

04. Rhine-Pallas is directed to a comprehensive healthcare management system for screening patients for one or more diseases, assessing patients' healthcare status, and providing recommended actions to address the diseases. Rhine-Pallas para. 2.

05. Rhine-Pallas describes a method of managing patient healthcare.

First, a patient profile is created, which includes patient data for a patient. The patient is then screened for a disease based on the patient profile. Thereafter, at least one test is identified to assess a state of the disease based on the patient profile, and the state of the disease is assessed based upon results of the test. The patient profile is updated accordingly to include the results of the at least one test and the assessed disease state. Based on a comparison of the updated patient profile to at least one predefined criterion regarding progression of the disease, a health management status of the patient with respect to the disease is determined. In certain embodiments, the health management status of the patient includes different stages of progression of the disease. A recommended action is then provided, and implemented to address the disease. Rhine-Pallas para. 9.

06. Rhine-Pallas describes the recommended action including providing transition services to the patient. The transition services can include education, training, adherence, reimbursement assistance, counseling, and transportation for a patient, and can further include services that allow a patient to be transitioned from in-patient care setting to ambulatory, home, or other settings, such as home health monitoring. Rhine-Pallas para. 194.

ANALYSIS

Claims 1, 3, and 6–12 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more

STEP 1³

Claim 12, as a method claim, nominally recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. The issue before us is whether it is directed to a judicial exception without significantly more.

STEP 2

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. . . . If so, we then ask, “[w]hat else is there in the claims before us?” . . . To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application [The Court] described step two of this analysis 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 Corp. Pty. Ltd. v. CLS Bank Int’l, 573 U.S. 208, 217–18 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)).

To perform this test, we must first determine what the claims are directed to. This begins by determining whether the claims recite one of the judicial

³ For continuity of analysis, we adopt the steps nomenclature from 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “2019 Guidance”).

exceptions (a law of nature, a natural phenomenon, or an abstract idea). Then, if claims recite a judicial exception, determining whether the claims at issue are directed to the recited judicial exception, or whether the recited judicial exception is integrated into a practical application of that exception, i.e., that the claims “apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” 2019 Guidance at 54. If the claims are directed to a judicial exception, then finally determining whether the claims provide an inventive concept because the additional elements recited in the claims provide significantly more than the recited judicial exception.

STEP 2A Prong 1

Method claim 12 recites obtaining data, assessing a clinical need, proposing a desired outcome, determining a service and a resulting side effect, creating a model, and creating and filtering a database to identify and determine an optimal service meeting recited criteria. Assessing an outcome and determining a service and side effect, absent any implementation details, is no more than data retrieval, albeit based on perhaps some criteria. Creating a model and database, again without any implementation details, is data retrieval, analysis, and modification based on model and database parameters, as the data for forming the model and database must come from somewhere and be somehow altered to result in the model and database. Thus, claim 12 recites retrieving, analyzing, and modifying data. None of the limitations recite technological implementation details for any of these steps, but instead recite only functional results to be achieved by any and all possible means.

From this we see that claim 12 does not recite the judicial exceptions of either natural phenomena or laws of nature. The next issue is whether it recites the judicial exception of an abstract idea. To answer this, we next determine whether it recites one of the concepts the Courts have held to be lacking practical application, *viz.*, mathematical concepts⁴, certain methods of organizing human interactions⁵, including fundamental economic practices and business activities, or mental processes⁶.

The Examiner determines the claims to be directed to using a mathematical model to determine an optimal healthcare service based on patient needs and a proposed outcome. Final Act. 3.

The preamble to claim 12 recites that it is a healthcare support method for determining care for a patient. The steps in claim 12 result in determining an optimal service based on model and database absent any technological mechanism other than a conventional computer for doing so.

As to the specific limitations, limitations 1, 4, 5, and 9 recite insignificant retrieving, analyzing, and modifying of healthcare data, which advise one to apply generic functions to get to these results. Steps 2 and 3

⁴ See, e.g., *Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); *Mackay Radio & Telegraph Co. v. Radio Corp. of Am.*, 306 U.S. 86, 94 (1939); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018).

⁵ See, e.g., *Bilski*, 561 U.S. at 628; *Alice*, 573 U.S. at 219-20; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed Cir. 2014); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1383 (Fed. Cir. 2017); *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1160–61 (Fed. Cir. 2018).

⁶ See, e.g., *Benson*, 409 U.S. at 67; *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–72 (Fed. Cir. 2011); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

recite human judgment in the form of assessing a clinical need and proposing a desired clinical outcome. Alternately, they are data gathering based on data derived from such human judgment. Limitations 6–8 are the only steps associated with actually performing what the claim produces and recite creating a model and database and filtering the database, which is simply generic advice to create such a model and database and filter it. To advocate generic advice to create such a model and database and filter it is conceptual advice for results to be obtained and not technological operations.

The Specification at 1:2–4 describes the invention as relating to determining care for a patient. Thus, all this intrinsic evidence shows that claim 12 is directed to identifying an optimal service based on some model and set of data, i.e., finding an optimal solution. This is consistent with the Examiner’s determination.

The concept of finding an optimal solution is a fundamental business and medical practice long prevalent in our system of commerce and medicine. The use of finding an optimal solution is also a building block of ingenuity in the mathematical study of operations research. Thus, finding an optimal solution is an example of a conceptual idea subject to the Supreme Court’s “concern that patent law not inhibit further discovery by improperly tying up the future use of these building blocks of human ingenuity.” *See Alice*, 573 U.S. at 216 (internal citations omitted). Claim 12 recites the idea of performing various conceptual steps generically resulting in the finding of an optimal solution. As we determined earlier, none of these steps recite specific technological implementation details, but instead get to this result by advising one to use a model and filtered dataset derived from pertinent

data to identify an optimal solution. Thus, claim 12 is directed to finding an optimal solution, which is a fundamental business and medical practice.

This in turn is an example of commercial or legal interactions and managing personal behavior or relationships or interactions between people as a certain method of organizing human interactions, because finding an optimal solution for a plan of action is both part of planning how members of an organization are to proceed in a coordinated manner and a commercial activity toward solving an issue in a corporate context. The concept of finding an optimal solution as advised to be done by use of a model and filtered dataset derived from pertinent data to identify an optimal solution is abstract conceptual advice to come up with some model and data to test the ideas on. The steps recited in claim 12 are part of coming up with that model and data.

Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015) (price optimization).

Alternately, this is an example of concepts performed in the human mind as mental processes because the steps of retrieving, analyzing, and modifying data mimic human thought processes of observation, evaluation, judgment, and opinion, perhaps with paper and pencil, where the data interpretation is perceptible only in the human mind. *See 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). Claim 12, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data retrieval, analysis, and modification and does not recite an improvement to a particular computer

technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 12 is directed to the abstract idea of retrieving, analyzing, and modifying data, and not a technological implementation or application of that idea.

Alternately, this is an example of a mathematical concept because the steps of creating a model and finding an optimal solution perform an operational research optimization mathematical algorithm. The remaining steps are mere data gathering and incidental post processing steps.

From this we conclude that at least to this degree, claim 12 is directed to the abstract idea of finding an optimal solution by advising one to use a model and filtered dataset derived from pertinent data to identify an optimal solution.

STEP 2A Prong 2

The next issue is whether claim 12 not only recites, but is more precisely directed to this concept itself or whether it is instead directed to some technological implementation or application of, or improvement to, this concept, i.e., integrated into a practical application.⁷

At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law At some level, “all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” . . . Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. . . . “[A]pplication[s]” of

⁷ *See, e.g., Alice*, 573 U.S. at 223, discussing *Diamond v. Diehr*, 450 U.S. 175 (1981).

such concepts “ ‘to a new and useful end,’ ” we have said, remain eligible for patent protection. . . . Accordingly, in applying the § 101 exception, we must distinguish between patents that claim the “ ‘buildin[g] block[s]’ ” of human ingenuity and those that integrate the building blocks into something more.

Alice, 573 U.S. at 217 (internal citations omitted).

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “‘to a particular technological environment.’” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our §101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 573 U.S. at 223–24 (internal citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely functional, devoid of implementation details. Steps 1, 4, and 5 are pure data gathering steps. Limitations describing the nature of the data do not alter this. Step 9 is

insignificant post solution activity, such as storing, transmitting, or displaying the results. Steps 2 and 3 recite human judgment in the form of assessing a clinical need and proposing a desired clinical outcome. Alternately, they are data gathering based on data derived from such human judgment. Steps 6–8 recite generic computer processing expressed in functional terms to be performed by any and all possible means and so present no more than abstract conceptual advice. All purported inventive aspects reside in how the data is interpreted and the results desired, and not in how the process physically enforces such a data interpretation or in how the processing technologically achieves those results.

Viewed as a whole, Appellants' claim 12 simply recites the concept of finding an optimal solution as performed by a generic computer. To be sure, claim 12 recites doing so by advising one to use a model and filtered dataset derived from pertinent data to identify an optimal solution. But this is no more than abstract conceptual advice on the parameters for such finding an optimal solution and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

Claim 12 does not, for example, purport to improve the functioning of the computer itself. Nor does it effect an improvement in any other technology or technical field. The 17 pages of written description in the specification do not bulge with disclosure, but only spell out different generic equipment⁸ and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of finding an optimal solution under different scenarios. They

⁸ The Specification describes the computer requirements as being those of a general purpose computer. Spec. 17:3–9.

do not describe any particular improvement in the manner a computer functions. Instead, claim 12 at issue amounts to nothing significantly more than an instruction to apply the abstract idea of finding an optimal solution by advising one to use a model and filtered dataset derived from pertinent data to identify an optimal solution using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

None of the limitations reflect an improvement in the functioning of a computer, or an improvement to another technology or technical field, applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease or medical condition, implements a judicial exception with, or uses a judicial exception in conjunction with, a particular machine or manufacture that is integral to the claim, effects a transformation or reduction of a particular article to a different state or thing, or applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception.

We conclude that claim 12 is directed to advising one to use a model and filtered dataset derived from pertinent data to identify an optimal solution to achieve the functional result of finding an optimal solution as distinguished from a technological improvement for achieving or applying that result. The claim does not integrate the judicial exception into a practical application.

STEP 2B

The next issue is whether claim 12 provides an inventive concept because the additional elements recited in the claim provide significantly more than the recited judicial exception. Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer for retrieving, analyzing, and modifying data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are generic, routine, conventional computer activities that are performed only for their conventional uses. *See Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). *Also see In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming”). None of these activities are used in some unconventional manner nor do any produce some unexpected result. Appellants do not contend they invented any of these activities. In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am.*, 898 F.3d at 1168.

Considered as an ordered combination, the computer components of Appellants’ claim 12 add nothing that is not already present when the steps are considered separately. The sequence of data

retrieval-analysis-modification is equally generic and conventional or otherwise held to be abstract. *See Ultramercial*, 772 F.3d at 715 (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission), *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring). The ordering of the steps is, therefore, ordinary and conventional.

We conclude that claim 12 does not provide an inventive concept because the additional elements recited in the claim does not provide significantly more than the recited judicial exception.

REMAINING CLAIMS

As to the independent structural claim, it is no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] . . . against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’” *Alice*, 573 U.S. at 226 (internal citations omitted). The dependent claims merely describe process parameters. As a corollary, the claims are not directed to any particular machine. We conclude that the claims at issue are directed to a patent-ineligible concept itself, and not to the practical application of that concept.

LEGAL CONCLUSION

From these determinations, we further determine that the claims do not recite an improvement to the functioning of the computer itself or to any other technology or technical field, a particular machine, a particular transformation, or other meaningful limitations. From this we conclude the claims are directed to the judicial exception of the abstract idea of finding an optimal solution, without significantly more.

APPELLANTS' ARGUMENTS

As to Appellants' Appeal Brief arguments, we adopt the Examiner's determinations and analysis from Final Action 2–5 and Answer 2–7 and reach similar legal conclusions. We now turn to the Reply Brief.

We are not persuaded by Appellants' argument that the claims are analogous to those in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). Reply Br. 2–4. The claims differ from those found patent eligible in *Enfish*, where the claims were “specifically directed to a *self-referential* table for a computer database.” 822 F.3d 1327, 1337 (Fed. Cir. 2016). The claims, thus, were “directed to a specific improvement to the way computers operate” rather than an abstract idea implemented on a computer. *Id.* at 1336. Here, by contrast, the claims are not directed to an improvement in the way computers operate. Though the claims purport to accelerate the process of using a model to find a solution, our reviewing court has held that speed and accuracy increases stemming from the ordinary capabilities of a general purpose computer “do[] not materially alter the patent eligibility of the claimed subject matter.” *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*,

687 F.3d 1266, 1278 (Fed. Cir. 2012). Instead, the claims are more analogous to those in *FairWarning*, 839 F.3d 1089 (Fed. Cir. 2016), wherein claims reciting “a few possible rules to analyze audit log data” were found to be directed to an abstract idea because they asked “the same questions (though perhaps phrased with different words) that humans in analogous situations detecting fraud have asked for decades.” *FairWarning*, 839 F.3d at 1094, 1095.

We are not persuaded by Appellants’ argument that the claims recite limitations that allow determined medical services to be calibrated across care settings, including for example the patient’s home, and through the natural progression of patients’ condition. (*See Id.*, p. 3 ll. 8-12). The recited “service-outcome-need model” is a technological solution to existing patient care models, and the recited “service database” encompassing the service-outcome-need models is a technological improvement over conventional databases. (*See Id.*, p. 4 ll. 18-33; p. 5 ll. 16-23). The recited “processor” performs its retrieval duties more efficiently by updating the service database constantly, providing a feedback mechanism for providing input on the effectiveness of a proposed service for a patient.

Reply Br. 3. A model is a representation, whose interpretation is discernible only in the human mind, and, therefore, an abstraction as it literally abstracts a limited number of characteristics. Again, reciting a computer to improve speed and accuracy does not materially alter the patent eligibility of the claimed subject matter.

Appellants also attempt to analogize the claims to those involved in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). Reply Br. 4–5. In *McRO*, the court held that, although the processes were previously performed by humans, “the traditional process and newly claimed method . . . produced . . . results in fundamentally

different ways.” *FairWarning*, 839 F.3d at 1094 (differentiating the claims at issue from those in *McRO*). In *McRO*, “it was the incorporation of the claimed rules not the use of the computer, that improved the existing technology process,” because the prior process performed by humans “was driven by subjective determinations rather than specific, limited mathematical rules.” 837 F.3d at 1314 (internal quotation marks, citation, and alterations omitted). In contrast, the claims of the instant application merely implement an old practice of using decision criteria in making optimization decisions in a new environment. Appellants have not argued that the claimed processes of selecting services apply rules of selection in a manner technologically different from those which humans used, albeit with less efficiency, before the invention was claimed. Merely pigeonholing the objects of decision making in filters to aid decision making is both old and itself abstract.

The claims in *McRO* were not directed to an abstract idea, but instead were directed to “a specific asserted improvement in computer animation, i.e., the automatic use of rules of a particular type.” . . . We explained that “the claimed improvement [was] allowing computers to produce ‘accurate and realistic lip synchronization and facial expressions in animated characters’ that previously could only be produced by human animators.” . . . The claimed rules in *McRO* transformed a traditionally subjective process performed by human artists into a mathematically automated process executed on computers.

FairWarning, 839 F.3d at 1094 (internal citations omitted) (differentiating the claims at issue from those in *McRO*).

We are not persuaded by Appellants’ argument that the claims contain an inventive concept that is also found in the specific ordered combination of the limitations, similar to the Federal Circuit’s findings in *BASCOM*

(*BASCOM Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)). Reply Br. 5–7. Initially, we remind Appellants that *BASCOM* did not find claims eligible on the substance, but rather that the Appellees did not provide sufficient evidence to support a 12(b)(6) motion to dismiss in which facts are presumed in the non-movant’s favor.

The key fact in *BASCOM* was the presence of a structural change in “installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server.” *BASCOM*, 827 F.3d at 1350. The instant claims have no analogous structural benefit.

Claims 1, 3, 6, and 8–12 rejected under 35 U.S.C. § 103(a) as unpatentable over Utterback, Morris, and Rhine-Pallas

We are persuaded by Appellants’ argument that the art fails to use current and target locations as service database filter criteria. We agree with the Examiner that Utterback describes providing a transition, i.e., relocation service that would necessarily take such current and target locations into account. As Appellants contend, however, this does not imply that doing so involves using those locations in a filter applied to a service database created based on patient data. Rather, this relocation decision appears to be a separate decision made beyond the particular service decisions and the result included in the plan of action.

Claim 7 rejected under 35 U.S.C. § 103(a) as unpatentable over Utterback, Morris, Rhine-Pallas, and Ennett

Claim 7 is a dependent claim and, therefore, the arguments as to the independent claims are equally persuasive here.

CONCLUSIONS OF LAW

The rejection of claims 1, 3, and 6–12 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

The rejection of claims 1, 3, 6, and 8–12 under 35 U.S.C. § 103(a) as unpatentable over Utterback, Morris, and Rhine-Pallas is improper.

The rejection of claim 7 under 35 U.S.C. § 103(a) as unpatentable over Utterback, Morris, Rhine-Pallas, and Ennett is improper.

DECISION

The rejection of claims 1, 3, and 6–12 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) (2011).

AFFIRMED