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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RUTH E. SKOCIC

Appeal 2017–005818
Application 13/492,791
Technology Center 3600

Before ANTON W. FETTING, BRUCE T. WIEDER, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.
FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Ruth E. Skocic (Appellant) seeks review under 35 U.S.C. § 134 of a final rejection of claims 1–20, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellant invented a form of health care data management.
Specification para. 5.

¹ Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.,” filed February 17, 2015) and Reply Brief (“Reply Br.,” filed September 29, 2015), and the Examiner’s Answer (“Ans.,” mailed July 31, 2015), and Final Action (“Final Act.,” mailed May 16, 2014).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A health care data management system comprising a server device including a processor device and at least one computer storage medium, the at least one computer storage medium storing a database and data instructions, wherein the data instructions are executable by the processor device to:

[1] register a user with the server device by receiving user data including a first biometric identifier;

[2] store the user data and the first biometric identifier in the database at the server device,

the server device and the database being configured to operate remote from the user;

[3] associate the first biometric identifier with the user data in the database;

[4] receive health care information pertaining to the user and store the health care information in the user data in the database;

[5] receive from a mass transport vehicle computing system a request including a second biometric identifier;

[6] search the database with the server device to identify the first biometric identifier as a match to the second biometric identifier;

[7] transmit at least part of the user data associated with the first biometric identifier to the mass transport vehicle computing system in response to the request;

[8] update a status of the user in the user data of the database to indicate that the user is a passenger on a mass transport vehicle associated with the mass transport vehicle computing system;

[9] conduct a search of the user data in the database to identify user data that indicates that the associated user is a passenger on the mass transport vehicle;

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and

[10] associate the user data with a travel reservation of the mass transport vehicle made by the user.

The Examiner relies upon the following prior art:

Huyn US 2002/0035486 A1 Mar. 21, 2002

Sehr US 6,926,203 B1 Aug. 9, 2005

Skocic US 2009/0070148 A1 Mar. 12, 2009

BenYitschak US 2010/0305984 A1 Dec. 2, 2010

SartinServices, Press Releases: Sartin Services, Inc. Creates Mobile Evacuation Bus, March 29, 2007 <<http://web.archive.org/web/20090404152333/http://www.sartinservices.com/press.asp?id=5>>

Claims 1–20 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 6 and 8 stand rejected under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention.

Claims 1–13, 15–18, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Skocic, SartinServices, and Sehr.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Skocic, SartinServices, Sehr, and BenYitschak.

Claim 19 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Skocic, SartinServices, Sehr, and Huyn.

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

Sehr

01. Sehr is directed to travel system and methods used throughout the travel industry, including by passengers, providers of travel services and transportation means, financial institutions and transaction processors offering electronic payment means and clearing of those payments, and by service providers of other travel-related services. To facilitate the intended use, a portable passenger card will be compiled and issued as a multi-application means for storage and processing of data and information, decision logic support and communications purposes, and identification and authentication schemes; as well as for hosting a traveler's pass, payment purse and a plurality of application-specific traveling services. Sehr 1:15–27.

02. A CARD STATION (1) allows a passenger, or any other entity, to interact with or couple to the system while planning and evaluating a particular trip or several travel itineraries, including making the appropriate reservations and loading the related ticket and travel information into the passenger card. The station can further be used to download monetary value into the passenger card, pay for travel-related services via the card-based means, and upload the electronic payments to a service provider. The station

can also be used to compile the contents of the passenger card, so as to serve multiple application needs while hosting the related application modules in the same card. Sehr 4:33–49.

Skocic

03. Skocic is directed to health care data management. Skocic para. 6.
04. Skocic describes patient information including health information being associated with a biometric identifier of a patient. The biometric identifier is used to access the patient information. Skocic para. 6.
05. Skocic describes registering a user by receiving user data including a first biometric identifier; storing the user data and the first biometric identifier in the database and associating the first biometric identifier with the user data in the database; receiving health care information pertaining to the user and storing in the user data in the database; receiving from a caregiver computing system a request including a second biometric identifier; searching the database to identify the first biometric identifier as a match to the second biometric identifier; and transmitting at least part of the user data associated with the first biometric identifier to the caregiver computing system in response to the request. Skocic para. 7.
06. Skocic describes reading a biometric identifier of the patient (such as the patient's fingerprint) if the person is involved in an emergency situation and emergency caregivers arrive on the scene

with an emergency vehicle computing system. The health records associated with the patient's fingerprint are then obtained from a server. As a result, the emergency caregivers are able to positively identify the patient (particularly if the patient is unable to identify herself) and review the health records of the patient immediately (in "real-time") to assist them in providing proper medical care to the patient. Skocic para. 37.

07. Skocic describes two periods—a preparation period and a health care period, which are separated by a health care event. The preparation period begins with operation to store a biometric identifier associated with a patient. In some embodiments, the operation is a user registration process. For example, a fingerprint is scanned and a biometric identifier is generated based on unique features of the fingerprint. The biometric identifier is then stored in memory, such as on a server. Then patient information associated with the biometric identifier is entered. For example, the patient's name and date of birth are stored in a database record associated with the biometric identifier. In some embodiments, patient data is stored in the database and associated with the biometric identifier. Skocic paras. 68–70.

08. Skocic describes an incoming patient's display allowing a caregiver to quickly locate information regarding patients. Searches may be by available status identifiers. Examples of status identifiers include All, Arrived, Cancelled, In Transit, and Patient Expired. The In Transit status identifier is associated with

a patient that is in transit to the health care facility. In transit includes a patient that is being transported by an emergency vehicle or a patient who is expected, such as because a telephone call was received indicating that the patient is coming to the health care facility. Skocic para. 92–93.

09. Skocic further describes an incoming patient’s display allowing a caregiver to quickly locate information regarding patients. The Add new status record section is a section where a caregiver can enter a new status record regarding the patient. A status prompt includes a pull down menu that allows a user to identify the current status of the patient as Arrived, Cancelled, In Transit, or Patient Expired, for example. If the status is In Transit, then Estimated Time of Arrival (ETA) prompt is provided for the caregiver to enter the estimated time of arrival of the patient. In some embodiments ETA is computed automatically based upon the position of the patient in an emergency vehicle. For example, a global positioning system (GPS) tracks the position of the emergency vehicle relative to the caregiver facility. The estimated transit time between the current position and the caregiver facility is computed as the ETA. Skocic para. 126.

SartinServices

10. SartinServices is directed to a Mobile Evacuation Bus. SartinServices First paragraph.

ANALYSIS

Claims 1–20 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more

System claim 1 recites registering and storing user data, associating the data with each other, receiving healthcare information, receiving a request and searching and transmitting data in response, updating status data, conducting a data query, and associating further data. Thus, claim 1 recites receiving, analyzing, modifying, displaying, and transmitting data. None of the limitations recite implementation details for any of these steps, but instead recite functional results to be achieved by any and all possible means. Data reception, analysis, modification, display, and transmission are all generic, conventional data processing operations to the point they are themselves concepts awaiting implementation details. The sequence of data reception–analysis–modification–display–transmission is equally generic and conventional. The ordering of the steps is therefore ordinary and conventional. The remaining claims merely describe process parameters, with no implementation details.

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

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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 Intl, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent–ineligible concept. The Examiner determines the claims to be directed to comparing the second identifier to the stored identifier and associating the user information with a travel information, i.e. comparing new and stored information and using rules to identify options. Ans. 19–20.

Although the Court in *Alice* made a determination as to what the claims were directed to, we find that this case’s claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The preamble to claim 1 recites that it is a health care data management system. The steps in claim 1 result in determining that a user is a passenger on a mass transport vehicle and obtaining data about the user absent any technological mechanism other than a conventional computer for doing so. The Specification at paragraph 5 recites that the invention relates to health care data management. Thus, all this evidence shows that claim 1 is directed to identifying and obtaining information about a passenger, i.e. data query. This is consistent with the Examiner’s determination.

It follows from prior Supreme Court cases, and *Bilski* (*Bilski v Kappos*, 561 U.S. 593 (2010)) in particular, that the claims at issue here are directed to an abstract idea. The concept of data query is a fundamental data

gathering practice long prevalent in civilization. The use of data query is also a building block of ingenuity in gathering information. Thus, data query, like hedging, is an “abstract idea” beyond the scope of §101. *See Alice Corp. Pty. Ltd.* at 2356.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of data query at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See Alice Corp. Pty. Ltd.* at 2357.

Further, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 1, unlike the claims found non–abstract in prior cases, uses generic computer technology to perform data reception, analysis, modification, display, and transmission 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 1 is directed to the abstract idea of receiving, analyzing, modifying, displaying, and transmitting data.

The remaining claims merely describe process parameters. We conclude that the claims at issue are directed to a patent–ineligible concept.

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

the 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 Corp. Pty. Ltd., 134 S.Ct. at 2358 (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 Corp. Pty. Ltd.*, 134 S.Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer for receiving, analyzing, modifying, displaying, and transmitting data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well–understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp. v. Alstom S.A.*, *supra*. *Also see In re Katz*

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Interactive Call Processing Patent Litigation, 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”). 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 America Inc. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellant’s claims add nothing that is not already present when the steps are considered separately. The sequence of data reception—analysis—modification—display—transmission is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (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 Communications, 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.

Viewed as a whole, Appellant’s claims simply recite the concept of data query as performed by a generic computer. To be sure, the claims recite doing so by advising one to initially store data that may be useful later and

then retrieve the data when needed in a mass transport context. But this is no more than abstract conceptual advice on the parameters for such data query and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

The claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. The Specification spells out different generic equipment² and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of data query under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of data query using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.* at 2360.

We are not persuaded by Appellant's argument that "the Examiner alleges merely that the invention contains an abstract idea, i.e. comparing new and stored data. The Examiner, however, fails to show that the invention is itself merely an abstract idea, without significantly more." Reply Br. 5. Appellant misstates the *Alice* test. Rather the test is whether the claim is directed to an abstract idea. *Electric Power, supra* answers this readily.

² The Specification describes a laptop computer, a handheld computing system, a tablet computer, a personal digital assistant (PDA), a cell phone, and other computing systems. Spec. para. 46.

We are not persuaded by Appellant’s argument that “[r]ather than just an idea, it further provides instructions on application and is further tied to a particular machine or apparatus by changing medical information and date to a ‘different state or thing.’” Reply Br. 6. Providing instructions is no more than abstract conceptual advice. Changing data is exactly what generic computers do, and does not transform a generic computer into a specific machine. At bottom, the claims recite no technological implementation details that alter machine operation, but instead recite conventional data operations.

The claims here, in contrast, are not directed to an improvement in the way computers operate, nor does FairWarning contend as much. While the claimed system and method certainly purport to accelerate the process of analyzing audit log data, the speed increase comes from the capabilities of a general-purpose computer, rather than the patented method itself. Thus here, as in *Electric Power*, “the focus of the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.”

FairWarning, 839 F.3d 1089, 1095 (Fed. Cir. 2016)(citations omitted)

We are not persuaded by Appellant’s argument that “the invention clearly provides for improvements that direct a solution of a technological problem, i.e. the acquisition and tracking of medical information data among a group of passengers.” Reply Br. 7. The acquisition and tracking of medical information is a data management problem, not a technological problem.

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Claims 6 and 8 rejected under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention

Appellant does not argue but instead states that “the rejections under §112 of claims 16 and 18 will be addressed after the present appeal process has completed.” App. Br. 6. Although Appellant then presents some argument in the Reply Brief at 2, this is untimely. Accordingly we summarily affirm the rejection.

Claims 1–13, 15–18, and 20 rejected under 35 U.S.C. § 103(a) as unpatentable over Skocic, SartinServices, and Sehr

With respect to the Appeal Brief arguments, we adopt the Examiner’s determinations and analysis from Final Action 4–16 and Answer 21–33 and reach similar legal conclusions. We now turn to the Reply Brief.

We are not persuaded by Appellant’s argument that

The Examiner fails to give any weight to the context of the present invention, i.e. a medical mass transportation vehicle such as an ambulance. Rather, the Examiner bypasses such functionality altogether. Associating the user data and the travel reservation allows a caregiver using a health care data management system of claim 1 to immediately determine whether a person is a traveler that was present on a particular plane or in a particular hotel.

Reply Br. 2–3. First, the Examiner gives substantial weight to the medical context of the claims, evidenced by the determinations made at Final Action 4–6 referring to patient healthcare information such as medical history data, medical records, and treatment records. Appellant focuses on the final limitation in claim 1 of “associat[ing] the user data with a travel reservation of the mass transport vehicle made by the user.” The problem

for the Appellant is that this limitation fails to refer to any medical context. This limitation does not even recite any manner or implementation for such associating and more critically, the remainder of the claim does not affect and is not affected by this limitation. Appellant argues that the association made by Sehr is not for the purpose Appellant envisions and contends. Nevertheless, Sehr describes making such an association for a traveler, and a traveler is a likely passenger on the mass transport vehicle recited in the claims and also described in the other two references. Thus it is reasonable to apply Sehr to the other two references. This is a classic instance of an argument being not commensurate with the scope of the claim.

We are not persuaded by Appellant's argument that "[t]here is no suggestion as to the desirability of any modification of the references to describe the present invention." Reply Br. 4. The Examiner does not modify Skocic, but only shows that one of ordinary skill would have seen that the evacuation bus of SartinServices was a reasonable embodiment of Skocic's vehicle, and that passengers using Sehr's medical data download were reasonable embodiments of Skocic's passengers.

Claim 14 rejected under 35 U.S.C. § 103(a) as unpatentable over Skocic, SartinServices, Sehr, and BenYitschak

With respect to the Appeal Brief arguments, we adopt the Examiner's determinations and analysis from Final Action 16–17 and Answer 33–34 and reach similar legal conclusions. This is not further argued in the Reply Brief.

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*Claim 19 rejected under 35 U.S.C. § 103(a) as unpatentable over Skocic,
SartinServices, Sehr, and Huyn*

This rejection is not separately argued.

CONCLUSIONS OF LAW

The rejection of claims 1–20 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

The rejection of claims 6 and 8 under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention is uncontested.

The rejection of claims 1–13, 15–18, and 20 under 35 U.S.C. § 103(a) as unpatentable over Skocic, SartinServices, and Sehr is proper.

The rejection of claim 14 under 35 U.S.C. § 103(a) as unpatentable over Skocic, SartinServices, Sehr, and BenYitschak is proper.

The rejection of claim 19 under 35 U.S.C. § 103(a) as unpatentable over Skocic, SartinServices, Sehr, and Huyn is proper.

DECISION

The rejection of claims 1–20 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