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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERIC ROSOW, JOE ADAM, and CHRIS ROTH

Appeal 2017-005975
Application 13/117,674
Technology Center 3600

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
AMEE A. SHAH, *Administrative Patent Judges*.

SHAH, *Administrative Patent Judge*.

DECISION ON APPEAL¹

The Appellants² appeal under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claim 1 under 35 U.S.C. § 101 as being directed to a judicial exception without significantly more. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Throughout this Decision, we refer to the Appellants’ Appeal Brief (“Appeal Br.,” filed Oct. 10, 2016), Reply Brief (“Reply Br.,” filed Feb. 24, 2017), and Specification (“Spec.,” filed May 27, 2011), and to the Examiner’s Answer (“Ans.,” mailed Jan. 24, 2017) and Non-Final Office Action (“Office Act.,” mailed Mar. 8, 2016).

² According to the Appellants, the real party in interest is Allscripts Healthcare Solutions, Inc. Appeal Br. 3.

STATEMENT OF THE CASE

The Appellants' invention "generally relates to the fields of automated resource management and virtual instrument technology" (Spec. ¶ 3), and more particularly to "an easy-to-use intelligent application that is designed to allow administrators, clinicians and managers to easily access, analyze and display real-time patient and bed availability and related information from ancillary information systems, databases and spreadsheets" (*id.* ¶ 10).

Claim 1 is the sole claim on appeal and is reproduced below:

1. An apparatus for the graphical display of a facility's bed management and room occupant status information, the apparatus comprising:

(a) a display incorporating a plurality of icons viewed on the display, each said icon simultaneously conveying a first level of hospital room information regarding: bed management information, including at least one of patient bed occupancy and bed availability, said icons being arranged on said display in the pattern of a floor plan of the facility;

(b) wherein each said icon is associated with one of said rooms of said facility for which information is conveyed, the icons being associated with a plurality of different rooms;

(c) wherein the display provides a link to secondary patient information;

(d) wherein the secondary patient information is displayed in response to user interaction with an icon of a patient occupied room;

(e) wherein said icons are continually updated based on information received from a patient admissions/discharge system of a health care facility via transactional messages;

(f) wherein the secondary information is displayed solely to authorized users of the apparatus;

(g) wherein one of the icons indicates a room is unoccupied;

- (h) wherein one of the icons indicates a room is occupied;
- (i) wherein one of the icons comprises a color indicating one or more attributes of a patient occupying the room associated with the icon;
- (j) wherein the secondary patient information is medical information of the patient occupying the patient occupied room; and
- (k) wherein a first one of the icons includes, for a first patient in a room associated with the first one of the icons,
 - (i) color coding indicating a type of medical service the first patient was provided,
 - (ii) a geometric symbol indicating whether the first patient is an inpatient or outpatient, and
 - (iii) a count-down timer indicating time relative to a scheduled discharge, the count-down timer displaying a negative value to indicate the scheduled discharge for the first patient is past-due a number of hours corresponding to a displayed value of the count-down timer.

Appeal Br. 16–17 (Claims App.)

ANALYSIS

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision 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, 588–89 (2013)).

The Supreme Court in *Alice* reiterated the two-step framework, set forth previously in *Mayo Collaborative Services v. Prometheus*

Laboratories, Inc., 566 U.S. 66, 78–79 (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. The first step in that analysis is to “determine whether the claims at issue are *directed to* one of those patent-ineligible concepts.” *Id.* (emphasis added) (citing *Mayo*, 566 U.S. at 79). If so, the second step is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether the additional elements “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 78–79).

We first address the Appellants’ contention that the Examiner failed to establish a *prima facie* case of patent-ineligible subject matter because the Examiner “failed to identify the particular abstract idea that the Examiner believes the claims to be directed to.” Appeal Br. 11. We disagree. In rejecting the pending claims under § 101, the Examiner analyzed the claims using the *Mayo/Alice* two-step framework, in accordance with the guidance set forth by the USPTO. *See* Office Act. 3–4. Specifically, the Examiner notified the Appellants that the claim is directed to “the organization and categorization of bed attribute and patient data,” that is an abstract idea “because it uses categories to organize, store and transmit information (Cyberfone), which has been found by the courts to be an example of an abstract idea.” Office Act. 3; Ans. 3 (emphases omitted). The Appellants acknowledge that the Examiner makes such a determination. Appeal Br. 9.

Turning to the first step of the *Mayo/Alice* framework, the Appellants do not appear to disagree with the Examiner’s determination as to what the claim is directed. Rather, the Appellants argue that “if such a high level of

abstraction is utilized, it is absurdly clear that the claims include additional features that ensure that the claims are not a drafting effort designed to monopolize the identified idea of ‘the organization and categorization of bed attribute and patient data’.” Appeal Br. 9.

An examination of the claims shows that the apparatus of claim 1 comprises a display having: (1) icons that convey specific information, are associated with other information, are continually updated, indicate information, and comprises colors, symbols, and a timer (limitations (a), (b), (e), (g), (h), (i), (k)); and (2) links to secondary information displayed to authorized users in response to a user interaction ((limitations (c), (d), (f), and (j)). See Appeal Br. 16–17 (Claims. App). No further technical or structural limitations of the display are claimed, and the Specification describes the display generically. See Spec. ¶¶ 53 (“display 24”), 72 (discussing displaying information on a computer screen), 86–88, 94–98, 105, 113, 114 (all discussing the system displaying information). As such, the claim is directed to organizing, categorizing, and providing information,³ without any limitations on how to produce the results or any inventive technology.

The claim is similar to those claims found to be abstract in *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1345 (Fed. Cir. 2018) (“Recitation, as in this case, of the collection, organization, and display of

³ We note that although our description of the abstract idea may differ slightly from that of the Examiner, “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). The Board’s “slight revision of its abstract idea analysis does not impact the patentability analysis.” *Id.* at 1241.

two sets of information on a generic display device is abstract absent a ‘specific improvement to the way computers [or other technologies] operate.’ *Enfish*, 822 F.3d at 1336.”), *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions . . . [is] directed to an abstract idea.”), *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1348 (Fed. Cir. 2015) (claims comprising limitations of “maintaining the state [of icons], furnishing icons on a web page with a browser having Back and Forward navigation functions, and displaying an online application form” were directed to the abstract idea of “retaining information in the navigation of online forms”), *West View Research, LLC v. Audi AG*, 685 F. App’x 923, 926 (Fed. Cir. 2017) (claims directed to abstract idea of “receiving or collecting data queries, analyzing the data query, retrieving and processing the information constituting a response to the initial data query, and generating a visual or audio response to the initial data query”), and *Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App’x 988, 992 (Fed. Cir. 2014) (“the idea of collecting information in classified form, then separating and transmitting that information according to its classification, is an abstract idea that is not patent-eligible”).

The Appellants argue that “it is very clear that the claim includes additional features that ensure that the claim is not a drafting effort designed to monopolize the identified abstract idea.” Appeal Br. 9; Reply Br. 2. To the extent the Appellants argue that the additional features are specific enough to not be abstract, although there is a degree of particularity to the

type of information displayed, the limitations describe only the abstract idea of organizing and providing information. *See Ultramercial, Inc. v Hulu LLC*, 772 F.3d 709, 715 (Fed Cir 2014). To the extent the Appellants argue that, under the second step of the *Mayo/Alice* framework, the additional features amount to significantly more than the abstract idea (*see* Appeal Br. 9), we agree with the Examiner that the Appellants do not provide reasoning or argument how or why “these additional features add anything significantly more than the above-identified judicial exception.” Ans. 4–5.

Regarding the Appellants’ argument that the claim is not directed to an abstract idea because it “poses no risk of pre-empting the identified abstract idea” (Appeal Br. 10; *see also* Reply Br. 2), the Examiner correctly notes that although the Supreme Court has described “the concern that drives this exclusionary principle[, i.e., the exclusion of abstract ideas from patent eligible subject matter,] as one of pre-emption” (*see Alice*, 134 S. Ct. at 2354), characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. *See* Ans. 2. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 134 S. Ct. at 2354) (emphasis added); *cf.* Reply Br. 2–3. Although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Turning to the second step of the *Mayo/Alice* framework, in response to the Appellants’ argument that the claim “represent[s] an inventive

concept” (Appeal Br. 9) because the Examiner states that “[t]he pending claim[] recite[s] subject matter free of prior art’. Office Action, p. 4[, and] Applicant respectfully submits that the features that have been found novel and nonobvious similarly represent non-conventional features” (*id.* at 10; *see also* Reply Br. 3–4), the Appellants misapprehend the controlling precedent. A finding of novelty or non-obviousness does not automatically lead to the conclusion that the claimed subject matter is patent-eligible. Although the second step is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “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.*, 134 S. Ct. at 2355. An abstract idea does not transform into an inventive concept just because the prior art does not disclose or suggest it. *See Mayo*, 566 U.S. at 90; *cf.* Reply Br. 4. “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Myriad Genetics*, 569 U.S. at 591. Indeed, “[t]he ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981).

The Appellants posit that “[e]ven assuming *arguendo* that this functionality can be implemented utilizing conventional computer technologies, the functionality which is provided *can* still represent an inventive concept.” Appeal Br. 9 (emphasis added). The Appellants cite *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) for the proposition that “an inventive concept can be

found in the non-conventional and non-generic arrangement of known, conventional pieces.” *Id.* at 10. The Appellants state that the *BASCOM* court “went on to hold that the claimed ‘specific method of filtering Internet content cannot be said, as a matter of law, to have been conventional or generic.’” *Id.* This legal proposition is accurate, but the proposition’s veracity is not persuasive of Examiner error. The Appellants do not apply this legal principle to the present case. That is, the Appellants do not present substantive arguments or evidence as to what particular combination of elements in claim 1 allegedly produces a non-conventional and non-generic arrangement of known, conventional elements.

In the Reply Brief, the Appellants “note[] that the Examiner has offered no evidence that these activities [of the limitations] are indeed routine and conventional.” Reply Br. 3; *see also id.* at 4. However, the Appellants misconstrue the Examiner’s rejection. The Examiner does not find that the activities are “routine and conventional;” rather, the Examiner determines that

Looking at the limitations as an ordered combination adds nothing that is not already present when looking at the elements taken individually. There is no indication that the combination of elements improves the functioning of a computer or improves any other technology. Their collective functions merely provide conventional computer implementation.

Ans. 5. As discussed above, claim 1 recites a generic display that operating in its ordinary capacity to display data, as evidenced by the Specification. *See Spec.* ¶¶ 53, 72, 86–88, 94–98, 105, 113, 114. The Appellants do not provide reasoning, evidence, or argument to the contrary.

The Appellants also argue that

under a proper construction of 35 U.S.C. §101 which takes into account the TRIPS [Agreement on Trade Related Aspects of Intellectual Property Rights] requirement that “patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application”, the claimed invention is clearly patent eligible.

Appeal Br. 15; *see also id.* at 12–14 (citing *Alexander Murray v. The Schooner Charming Betsy*, 6 U.S. 64 (1804)). We decline to address these arguments regarding *Charming Betsy* and the canons of statutory construction as they relate to interpreting 35 U.S.C. § 101. The Board does not have the authority to supplant the Supreme Court’s interpretation of § 101, as expressed in cases such as *Mayo* and *Alice*.

Thus, we are not persuaded that the Examiner erred in the rejection of under 35 U.S.C. § 101 of claim 1.

DECISION

The Examiner’s rejection of claim 1 under 35 U.S.C. § 101 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)(1)(iv).

AFFIRMED