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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MATTHEW R. PERKINS, WEI GENG, and BRIAN WICKS

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Appeal 2017-006180  
Application 13/798,138  
Technology Center 3600

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Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and  
JOHN P. PINKERTON, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the Examiner's  
Final Rejection of claims 1–24.<sup>2</sup> We have jurisdiction under  
35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> According to Appellants, the real party in interest is Awarepoint Corporation. App. Br. 1.

<sup>2</sup> Appellants indicate they are unaware of any other related appeals. *See* App. Br. 1. However, we have determined that Appeal 2017-006075 (Application 14/253,833) and Appeal 2018-004901 (Application 13/798,081) are related to this appeal and are directed to the same underlying inventions and issues. *See* 37 C.F.R. § 41.37(c)(ii).

## STATEMENT OF THE CASE

Appellants' invention relates to a system and method utilizing context aware location tracking (Spec. ¶ 1). Exemplary claim 1 under appeal reads as follows:

1. A method for workflow modification in a facility, the method comprising:

receiving a plurality of signals at a plurality of sensors from a plurality of communication devices, each of the plurality of communication devices associated with an object or a person, each of the plurality of sensors positioned at a plurality of locations in a facility for real-time location tracking of persons and/or objects;

transmitting from the plurality of sensors the plurality of signals to a location engine;

determining at the location engine a location of at least one object or person based on one or more of the plurality of signals;

determining a first workflow from at least one location of the object or the person; and

determining a departure from the first workflow.

Claims 1–24 stand rejected under 35 U.S.C. § 101 as not being directed to patent-eligible subject matter. *See* Final Act. 2.

Claims 1–24 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Breazeale, Jr. (US 2009/0204434 A1; published Aug. 13, 2009) (“Breazeale”). *See* Final Act. 3–5.

## PRINCIPLES OF LAW

### *Patent-Eligible Subject Matter*

The Supreme Court has 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.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)). According to this framework, a determination is made to consider whether the claims at issue are directed to one of those concepts (i.e., laws of nature, natural phenomena, and abstract ideas). *See id.* If so, a further determination must be made to 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. *Id.* “The question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

#### *Anticipation*

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631(Fed. Cir. 1987). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

#### ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments that the Examiner erred. We are not persuaded the Examiner erred, and we adopt as our own the findings and reasons set forth by the Examiner. *See* Final Act. 2–6; *see also* Ans. 2–8. We highlight and address

specific findings and arguments for emphasis as follows.

*Rejection Under 35 U.S.C. § 101*

Independent claims 1, 10, and 17 recite a method and system for workflow modification in a facility, and are, therefore, directed to one of the four statutory categories of patentability enumerated by 35 U.S.C. § 101 (process, machine, manufacture, or composition of matter). Applying the first part of the *Alice* analysis, the Examiner finds the claims are directed to the abstract idea of tracking a location of an object/person and using rules to determine a workflow of that object/person. *See* Ans. 2–3. As found by the Examiner, the claims recite a method and system for performing steps that can be performed mentally, which indicates that the concept is “an idea of itself,” which is one of the four types of abstract ideas set forth in *Alice*. *See* Ans. 3. As further found by the Examiner, the recited steps correspond to concepts identified as abstract ideas by the courts, such as comparing new and stored information (*i.e.*, comparing sensor information to track a location of an object) and using rules to identify options (*i.e.*, determine a workflow based on the tracked location) as seen in *SmartGene, Inc. v. Advanced Biological Laboratories, SA*, 555 Fed. Appx. 950, 954–55 (Fed. Cir. 2014). *See* Ans. 3. Applying the second part of the *Alice* analysis, the Examiner finds the claims do not include additional elements that are sufficient to amount to significantly more than the abstract idea because the additional computer elements, which are recited at a high level of generality, provide conventional computer functions that do not add meaningful limits to practicing the abstract idea. *See id.* More specifically, as found by the Examiner, the recited sensors, communication devices, and location engine

are recited at a high level of generality and are recited as performing generic computer functions routinely used in computer applications. *See* Ans. 3–4.<sup>3</sup>

Beginning with the first step of the *Alice* analysis, we must determine “whether the claims at issue are directed to one of those patent-ineligible concepts,” including abstract ideas. *Alice*, 134 S. Ct. at 2355. In performing this determination, we ask whether the focus of the claims is on a specific asserted improvement in computer capabilities or, instead, on a process that qualifies as an “abstract idea” for which computers are invoked merely as a tool. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct. at 2358–59).

Appellants contend the claims are not directed to the alleged abstract idea of tracking items in a medical facility for at least two reasons. *See* App. Br. 8. First, according to Appellants, the Examiner has described the claim at a high level of abstraction untethered from the language of the claim when alleging that the claims are directed to tracking items in a medical facility. *See* App. Br. 8–9. Second, Appellants contend the Final Office Action fails to identify any persuasive prior court decisions that support the argument that the claims are directed to patent ineligible subject matter. *See* App. Br. 9. In their Reply Brief, Appellants further argue the reliance on *SmartGene* in the Examiner’s Answer is not persuasive because *Smartgene* is a non-precedential decision and the facts of *Smartgene* do not uniquely

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<sup>3</sup> Although the Examiner’s findings are explicitly directed to claim 1, the Examiner further finds the additional claim elements of dependent claims 2–9 fail to establish that the claims are not directed to an abstract idea without significantly more, and the Examiner’s findings also apply to claims 10–24. *See* Ans. 4–5.

match the facts in the present appeal. *See* Reply Br. 1. Appellants also argue that the claims provide a technical solution directed to improve an existing technological process, and thus, like the claims in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), the claims are patent-eligible. *See* Reply Br. 2.

We are not persuaded by Appellants' arguments. Considering the recited elements of the claims in light of Appellants' Specification, we agree with the Examiner's findings that the claims are directed to a method and system for performing the steps of receiving signals, transmitting the signals, determining a location of at least one object, determining a workflow of the object, and determining a departure from the workflow. *See* Ans. 3. We further agree with the Examiner that the recited steps can be performed mentally, and thus, the claims are directed to "an idea of itself," one of the four types of abstract idea set forth in *Alice*. *See id*; *see also Alice*, 134 S. Ct at 2355 ("[a]n idea of itself is not patentable."). Based on the recited elements, the claims are directed to tracking and collecting location information and analyzing the collected location information, which is an idea of itself and which is similar to abstract ideas previously identified by courts. *See Content Extraction and Transmission LLC v. Wells Fargo Bank, National Association*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (holding that claims drawn to collecting data, recognizing certain data within the collected data set, and storing the recognized data in memory are directed to an abstract idea); *see also Automated Tracking Solutions LLC v. Coca-Cola Company*, 723 Fed. Appx. 989, 993 (holding that claims directed to systems for locating, identifying and/or tracking of an object using RFID components are directed to an abstract idea).

Regarding Appellants' contention that the claims are directed to a technical solution that improves an existing technologic process, similar to the claims at issue in *McRO*, we are not persuaded by this contention. In *McRO*, the court held the claims were patent-eligible because the claims recited specific computer-implemented rules that allowed a computer to produce accurate and realistic lip synchronization and facial expressions in animated characters that previously could only be produced by human animators. *See McRO*, 837 F.3d at 1313. However, the present claims fail to recite sufficient technical details to describe how a computer system realizes an operational improvement via the claimed functionality. Thus, contrary to Appellants' assertion, the claims fail to recite the improvement to the computer system that Appellants argue the claims are directed to.

Because we conclude that the claims are directed to an abstract idea, we turn to the next step of the *Alice* analysis. In step two, as previously discussed, we 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." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78).

Here, Appellants argue the claims are directed to substantially more than an abstract idea because: (1) the claims are directed to improving another technical field/technology; (2) the claims apply any alleged abstract idea with a machine that does not perform generic computer functions; and (3) the claims add meaningful limitations that amount to more than generally linking an alleged abstract idea to a particular technological environment. *See App. Br.* 9–10. Appellants further argue the claims are directed to a particular arrangement of elements that provide a technical improvement

(*i.e.*, workflow modification in a facility) over prior ways of tracking items in a medical facility, and thus, the claims are similar to the claims in *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), the claims are directed to patent-eligible subject matter. *See* App. Br. 10–11.

Considering the recited elements of the claims in light of Appellants' Specification, we agree with the Examiner's findings that the claimed sensors, communication devices, and location engine are recited at a high level of generality and are recited as performing generic computer functions routinely used in computer applications. *See* Ans. 4. Evidence supporting the Examiner's findings is found in Appellants' Specification, which discloses that the prior art includes various tracking systems and uses of near-field communication devices, and further includes examples of the claimed system components (*e.g.*, sensors). *See e.g.*, Spec. ¶¶ 4–18, 64, 67, 69, 72. Therefore, considering the elements of the claims both individually and in combination, we conclude the claims include no additional elements that transform the nature of the claims into a patent-eligible application. *See Alice*, 134 S. Ct. at 2355.

Regarding Appellants' contention that the claims are directed to a particular arrangement of elements that provide a technical improvement over prior ways of tracking items in a medical facility, similar to the claims in *BASCOM*, we are not persuaded by this contention. In *BASCOM*, the court characterized the claims as claiming a technology-based solution to filter content on the Internet (implemented via customizable filtering features at specific locations remote from a user) that overcomes problems with other Internet filtering systems, as opposed to an abstract-idea based

solution implemented with generic technical components in a conventional way. *BASCOM*, 827 F.3d at 1351. Unlike the claims at issue in *BASCOM*, the present claims do not introduce a technical advance or improvement. The claims contain nothing that amounts to significantly more than a patent upon the abstract idea itself. To the extent the claims add anything to the abstract idea, it is a statement to use a computer system, to perform the abstract idea. “[I]f 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.” *Alice*, 134 S. Ct. at 2358 (quoting *Mayo*, 566 U.S. at 84).

Appellants additionally argue the claims do not preempt any alleged abstract idea, and are therefore patent-eligible for this additional reason. *See* App. Br. 9. This argument is not persuasive either, as the Federal Circuit has made clear that “the absence of complete preemption does not demonstrate patent eligibility” of a claim. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

Therefore, we are not persuaded the Examiner erred in finding claims 1–24 recite patent-ineligible subject matter. Accordingly, we sustain the rejection of claims 1–24 under 35 U.S.C. § 101.

*Rejection Under 35 U.S.C. § 102(e)*

Appellants contend Breazeale fails to disclose “transmitting from the plurality of sensors the plurality of signals to a location engine,” as recited in claim 1, and similarly recited in claims 10 and 17. *See* App. Br. 11, 13. Appellants argue Breazeale merely discloses a healthcare tracking system that includes mobile devices associated with each user, and fails to disclose the claimed location engine that receives signals from sensors. *See*

App. Br. 12, 13. Appellants further argue Breazeale discloses a main server system that hosts a scheduling system that interfaces with a scheduling system on mobile devices, and the main server system only hosts the scheduling system without receiving signals from proximity sensors. *See id.*

We are not persuaded by Appellants' contentions. Consistent with the Examiner's findings, Breazeale discloses a healthcare facility where proximity sensors are positioned throughout the facility to track movement of objects in the facility, where patients and caregivers are associated with transponders that are also tracked by the sensors within the facility, and where a tracking system stores time/location information captured by the sensors. *See* Ans. 7 (citing Breazeale ¶¶ 32, 34); *see also* Final Act. 3 (citing Breazeale ¶¶ 32, 34). Thus, we agree with the Examiner that Breazeale discloses "transmitting from the plurality of sensors the plurality of signals to a location engine," as recited in claim 1, and similarly recited in claims 10 and 17.

Appellants also contend Breazeale fails to disclose "determining at the location engine a location of at least one object or person based on one or more of the plurality of signals," as recited in claim 1, and similarly recited in claims 10 and 17. *See* App. Br. 12, 14. As argued by Appellants, since Breazeale does not disclose the claimed location engine, Breazeale also does not disclose the determining of a location by the location engine. *See id.*

We are not persuaded by this contention either. As described above, Breazeale discloses a tracking system that stores location information of patients, caregivers, and objects. *See* Ans. 7 (citing Breazeale ¶¶ 32, 34); *see also* Final Act. 3–4 (citing Breazeale ¶¶ 10, 290). Thus, we agree with the Examiner that Breazeale also discloses "determining at the location engine a

location of at least one object or person based on one or more of the plurality of signals,” as recited in claim 1, and similarly recited in claims 10 and 17.

Appellants also contend Breazeale fails to disclose “determining a first workflow from at least one location of the object or the person,” as recited in claim 1 and similarly recited in claim 17, and “determining a second workflow,” as recited in claim 10. *See* App. Br. 12–14. Appellants argue Breazeale merely discloses an audit module that has a workflow for resolving exceptions and a schedule resolution module has a series of steps to compare caregiver locations to patient locations. *See* App. Br. 12. However, Appellants assert Breazeale fails to disclose the claimed determining a first workflow from at least one location of an object or a person. *See* App. Br. 12–13. Appellants further argue that the Examiner has not cited any evidence for the claimed determining a second workflow, and that Breazeale fails to disclose the aforementioned claim element for the reasons described above. *See* App. Br. 14.

We are not persuaded by this contention. Consistent with the Examiner’s findings, Breazeale discloses a schedule resolution module that resolves time and location information received from mobile devices with schedule information for patients and caregivers, where the schedule information sets forth the expected locations and durations associated with the patients and caregivers. *See* Final Act. 4 (citing Breazeale ¶ 101); *see also* Ans. 7–8. Similar to Appellants’ Specification that discloses a workflow is “at least one of a series of locations, a series of states, a series of dwell times, a series of interactions, a series of milestones, or a series of detected events,” (Spec. ¶ 89), Breazeale’s schedule information discloses the claimed “workflow.” Thus, we agree with the Examiner that Breazeale

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also discloses “determining a first workflow from at least one location of the object or the person,” as recited in claim 1 and similarly recited in claim 17, and “determining a second workflow,” as recited in claim 10.

No separate arguments are presented for the remaining dependent claims. *See* App. Br. 13–14. Therefore, we are not persuaded that the Examiner erred in finding Breazeale anticipates the subject matter of claims 1–24. Accordingly, we sustain the rejection of claims 1–24 under 35 U.S.C. § 102(e).

#### DECISION

We affirm the Examiner’s rejection of claims 1–24 under 35 U.S.C. § 101.

We affirm the Examiner’s rejection of claims 1–24 under 35 U.S.C. § 102(e).

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