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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* CHIP W. ACH, EDWARD J. MAGNER,  
VAKMIKI RAO, and LIBBY C. WEBB<sup>1</sup>

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Appeal 2017-007732  
Application 13/746,544  
Technology Center 3600

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Before CARLA M. KRIVAK, IRVIN E. BRANCH, and  
AARON W. MOORE, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1, 4–11, 14–17, and 19–21, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

*Technology*

The application relates to “using a practice management system to track patient compliance with orders issued to a patient by a medical provider.” Spec. Abstract.

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<sup>1</sup> The real party in interest is the assignee, AthenaHealth, Inc. (hereinafter “Appellant”). App. Br. 2.

*Illustrative Claim*

Claims 1, 4–11, 14–17, and 19–21 are pending; of these, claims 1, 11, and 17 are independent. Claim 1 is reproduced below for reference.

1. A method of using a practice management system to track patient compliance with orders issued to a patient by a medical provider, the method comprising:

storing, by at least one storage device associated with a health information management component of the practice management system, a representation of the orders issued to the patient and an alarm associated with the representation of the orders, wherein the alarm specifies an amount of time, wherein the practice management system includes a communications management component configured to interact with the health information management component to send one or more notifications to the patient based, at least in part, on a status indicator associated with the representation of the orders;

determining, with at least one processor of the practice management system, whether the amount of time specified by the alarm has elapsed;

determining, when it is determined that the amount of time specified by the alarm has elapsed, whether the orders have been filled, wherein determining whether the orders have been filled is based, at least in part, on the status indicator associated with the representation of the orders;

sending, when it is determined that the orders have not been filled, a notification to the patient using the communications management component of the practice management system, wherein the notification includes information instructing the patient to access a user interface to input information about the orders;

receiving input via the user interface, wherein the input indicates a current status for the orders; and

updating, based at least in part, on the input received via the user interface, the status indicator associated with the representation of the orders stored by the health information

management component of the practice management system, wherein the updating is performed in response to receiving the input via the user interface.

*References and Rejections<sup>2</sup>*

Claims 1, 4–11, 14–17, and 19–21 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception to patent eligibility without significantly more. Final Act. 2, 20–22; Ans. 2–7.

Claims 1, 5, 6, 8, 9, 11, 15, 17, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Surwit (US 6,024,699, issued Feb. 15, 2000) and Adelson (US 2006/0294108 A1, published Dec. 28, 2006). Final Act. 3–15.

Claims 4, 7, 10, 14, 16, 19, and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Surwit, Adelson, and Hunt (US 2009/0164237 A1, June 25, 2009). Final Act. 15–20.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments. Arguments Appellant could have made but chose not to make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv); *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

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<sup>2</sup> Rather than repeat the Examiner’s positions and Appellant’s arguments in their entirety, we refer to the above mentioned Appeal Brief filed March 16, 2016 (“App. Br.”), as well as the following documents for their respective details: the Final Action mailed April 23, 2015 (“Final Act.”), the Examiner’s Answer mailed February 27, 2017 (“Ans.”), and Appellant’s Reply Brief filed April 26, 2017 (“Reply Br.”).

*Rejection of Claims 1, 4–11, 14–17, and 19–21 Under § 101*

Issue: Does the Examiner properly reject claim 1 under 35 U.S.C. § 101 as being directed to non-patentable subject matter?

Because Appellant argues all claims rejected under 35 U.S.C. § 101 as a group, our decision with respect to claim 1 is dispositive. App. Br. 6–10; Reply Br. 2–4. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant does not persuade us the Examiner errs in determining the claims are patent-ineligible pursuant to the two-part test enumerated in *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014)). *See* Final Act. 2, 20–21; Ans. 2–7. We adopt the Examiner’s reasoning, with respect to this rejection, to the extent consistent with our analysis; we add the following for emphasis.

Appellant argues the Examiner’s rejection does not identify an abstract idea because the “alleged abstract idea improperly overgeneralizes the claims because it is untethered from the actual claim language.” Reply Br. 2. Specifically, Appellant contests the Examiner’s determinations that the claims are directed to “collecting and storing order information, alarm information, status indicator information and order status information and analyzing the information to determine if an order has been filled in a specified time, to send a notification regarding the order, and to update the information,” (*id.* at 2) (quoting Ans. 3), and that “claim 1 does not include any steps of collecting order information, alarm information, status indicator information, or order status information.” *Id.* at 2–3. Appellant further argues that the Examiner errs in determining that the claims are similar to those found patent ineligible in *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016), because Appellant’s claims “recite a particular

implementation that allows for alternative methods for achieving the same result.” Reply Br. 3.

Appellant’s arguments are not persuasive because they narrowly focus only on the collection aspect of the Examiner’s summary of claim 1. *See* Reply Br. 2–3; Ans. 3–4. That is, the Examiner did not “overgeneralize” Appellant’s claim language as the Examiner is merely pointing out the claims recite generic data gathering and manipulation steps. Further, Appellant’s arguments do not explain how claim 1’s “particular set of steps for using a status indicator associated with a representation of orders in a practice management system” (Reply Br. 3) are dissimilar from “[C]ollecting information, including when limited to particular content (which does not change its character as information),” and “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more,” which are “within the realm of abstract ideas,” and were held to be patent ineligible. *Elec. Power Grp.*, 830 F.3d at 1353–54; *see also Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1350 (Fed. Cir. 2014) (“Data in its ethereal, non-physical form is simply information that does not fall under any of the categories of eligible subject matter under section 101”); and *Content Extraction and Transmission LLC v. Wells Fargo*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (finding that “[t]he concept of data collection, recognition, and storage is undisputedly well-known,” and “humans have always performed these functions”).

Therefore, we agree with the Examiner the claims are directed to an abstract idea and are patent ineligible under *Alice* step 1.

We also agree with the Examiner, that Appellant’s claims, when viewed as a whole and as an ordered combination, do not include additional limitations that are sufficient to amount to significantly more than the judicial exception, under *Alice* step 2.

We agree with the Examiner that Appellant’s “claims recite processes that are routine and well-understood in the art of healthcare compliance and simply implementing the process on a computer(s) is not enough to qualify as ‘significantly more’.” Ans. 4. Specifically, Appellant takes the “well-understood process of tracking a patient[’]s compliance with [] healthcare orders in order to facilitate the order” and implements it on a computer. *Id.* This does not qualify as significantly more. Appellant “is attempting to claim a process of reminding a patient to fill a healthcare order based on tracked data which may be done by humans, using generic computer structure and functions.” *Id.* Additionally, Appellant’s paragraph 60 states a non-transitory tangible computer readable storage medium such as “a computer memory, a USB drive, a flash memory, a compact disk, a tape” is used to perform the invention along with generic computer programs. *See* Ans. 5. This supports the Examiner’s determination that the additional limitations do not amount to significantly more.

Accordingly, we sustain the Examiner’s § 101 rejection of all pending claims as patent ineligible. Final Act. 2, 20–21; Ans. 2–7.

*Rejection Under § 103 over Surwit and Adelson*

Issue: Does the Examiner err in determining that the combination of Surwit and Adelson discloses a status indicator associated with a representation of orders?

Appellant does not persuade us the Examiner errs in determining the combination of Surwit and Adelson renders claims 1, 11, 17 obvious. We adopt the Examiner's findings and conclusion that these claims are obvious over the combination of Surwit and Adelson. Final Act. 3–15; Ans. 7–8. We provide the following for emphasis.

Appellant argues error because “the message transmission information in Adelson is not a status indicator.” Reply Br. 4 (citing Adelson ¶¶ 31–35). Appellant's argument is premised on “the message transmission information in Adelson [being] associated with transmitted and received messages themselves, rather than being stored information associated with a representation of orders, and on which a decision to send a notification to the patient is made.” *Id.*

We are not persuaded by Appellant's argument. “Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Here, the Examiner finds “[i]t would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Adelson with the method for tracking patient compliance as taught by Surwit.” Final Act. 6. Appellant's arguments do not address any teaching of Surwit. *See* App. Br. 11–13; Reply Br. 4–5. Notably, the Examiner finds that Surwit discloses an appointment date which, once received from the patient, serves to suspend further reminders to schedule an appointment, and then is used to initiate queries to the patient soliciting whether the appointment was actually kept. Final Act. 3–4 (citing Surwit col. 8, ll. 7–10; col. 19, ll. 1–7, col. 20, ll. 48–63).

Moreover, Appellant does not adequately explain why “it is improper to consider [Adelson’s] message transmission information” to be the claimed status indicator. Reply Br. 4. Adelson explicitly describes storing “data representative of . . . the contents of responsive messages,” such as whether a prescribed medicine was taken at a prescribed time. Adelson ¶¶ 31, 49. Appellant’s argument overlooks that the content of responsive messages also is stored.

Appellant argues claims 5, 15, and 20 are patentable for the additional reason that “[t]he initial scheduling of message transmission times described in paragraph [0043] and the repeated sending of messages when a patient response is not received described in paragraph [0049] are unrelated, and as such the Answer’s interpretation of these portions of Adelson is improper.” Reply Br. 5 (citing Ans. 8). We do not agree. The paragraphs provide various examples of how Adelson’s system may be deployed. Appellant’s argument that specific examples are different does not persuasively undermine the Examiner’s findings with respect to the system capabilities generally. *See* Ans. 8 (“Adelson discloses in paragraph [0043] that management messages may be sent at a deferred date based on a selected date in a calendar option, construed as scheduling information received via a user interface” and “the alarm or notification configured to be sent at a predetermined time, as discussed in paragraph [0049], would be updated with the deferred date based on a selected date in a calendar option.”).

Appellant does not separately argue the rejection of claims 4, 7, 10, 14, 16, 19, and 21 over Surwit, Adelson, and Hunt. *See generally* App. Br.

Accordingly, we are unpersuaded of error in the Examiner’s rejection of claims 1 and 11, and of claims 4–10 and 14–16, which depend therefrom

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and are argued therewith. App. Br. 12. We also are unpersuaded of error in the Examiner's rejection of claims 17 and 19–21, which are argued on the same basis. *Id.* at 13. *See* Reply Br. 4–5.

#### DECISION

For the reasons above, we affirm the Examiner's decision rejecting claims 1, 4–11, 14–17, and 19–21 under 35 U.S.C. §§ 101 and 103.

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. § 41.50(f).

AFFIRMED