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EXAMINER
PAULS, JOHN A

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KAY L. GRASSO, ARPI CHALIAN, THOMAS C. GIFFORD, and RONDA L. SHARP[1]

Appeal 2017-007826
Application 11/154,154
Technology Center 3600

Before ANTON W. FETTING, BIBHU R. MOHANTY, and JAMES A. WORTH, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1–6, 8–12, 14, and 17–26 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

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[1] According to Appellants, the real party in interest is Cerner Innovation, Inc. App. Br. 3.

THE INVENTION

The Appellants' claimed invention is directed to accessing a patient's electronic record for patient growth data and displaying the patient growth data on the computerized growth chart (Spec., para. 7). Claim 1, reproduced below, is representative of the subject matter on appeal.

> 1. Non-transitory computer-storage media having computer-executable instructions embodied thereon that, when executed, perform a method of displaying patient growth data on a computerized growth chart comprising:
>
> (1) accessing a database including growth chart data for a computerized growth chart, appropriate for a patient based on the patient's age and gender, wherein the computerized growth chart includes a reference curve, and wherein the growth chart data is measurements for one or more of height, weight, length, head circumference, and bone age;
>
> (2) utilizing the growth chart data to display the computerized growth chart;
>
> (3) accessing at least one electronic medical record associated with the patient for a set of patient growth data that was documented in the patient's electronic medical record, wherein the set of patient growth data includes a first subset of patient growth data from a first type of visit and a second subset of patient growth data from a second type of visit;
>
> (4) filtering, utilizing a computing device, the first subset of patient growth data documented during the first type of visit from the set of patient growth data such that the second subset of patient growth data documented during the second type of visit is displayed in the computerized growth chart and the first subset of patient growth data is not displayed;
>
> (5) generating a display of the second subset of patient growth data on the computerized growth chart, wherein a computing device determines the display of the second subset of patient growth data, and wherein the second subset of patient growth data was documented in

> the patient's electronic medical record during the second type of visit;
>
> (6) generating tabs associated with the computerized growth chart, wherein the tabs are selectable to change the display of patient growth data, and wherein the tabs include at least a first tab associated with the first subset of patient growth data documented during the first type of visit and a second tab associated with the second subset of patient growth data documented during the second type of visit such that a selection of either the first tab or the second tab causes the corresponding subset of patient growth data to be displayed; and
>
> (7) receiving a selection of the first tab, wherein the first subset of patient growth data documented during the first type of visit is displayed on the display, along with the second subset of patient growth data documented during the second type of visit, based on the selection.

THE REJECTION

The following rejection is before us for review:

Claims 1–6, 8–12, 14, and 17–26 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence[2].

[2] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

ANALYSIS

Rejection under 35 U.S.C. § 101

The Appellants argue that the rejection of claim 1 is improper (App. Br. 6–18, Reply Br. 3–8). The Appellants argue that the claim is not directed to an abstract idea (App. Br. 6–14, Reply Br. 3). The Appellants also argue the claim is "significantly more" than the alleged abstract idea (App. Br. 14–18, Reply Br. 4–8).

In contrast, the Examiner has determined that the rejection of record is proper (Final Act. 2–7, Ans. 2–18).

We agree with the Examiner. Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an 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).

In judging whether claim 1 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is "directed to" a patent-ineligible abstract idea. If so, we then consider the elements of the 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 of the abstract idea. *Id.* This is a search for an "inventive concept" an element or combination of elements sufficient to ensure that the claim amounts to "significantly more"

than the abstract idea itself. *Id.* The Court also stated that "the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention." *Id. at* 2358.

Here, we determine that the claim is directed to the concept of displaying a growth chart. This is a method of organizing human activities or an idea in itself, and is an abstract idea beyond the scope of § 101. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) (where collecting information, analyzing it, and displaying results from certain results of the collection and analysis was held to be an abstract idea). In *Intellectual Ventures I LLC v. Capital One Financial*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) it was held that collecting, displaying, and manipulating data was directed to an abstract idea. "[A] process that employs mathematical algorithms to manipulate existing information to generate additional information is not patent eligible." *See Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014).

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not. The Specification at paragraphs 27–37, for instance, describes using conventional computer RAM, disk storage, servers, computers, networks, PCs, and routers in a manner known for their conventional functions.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely

conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function.

The Appellants have also cited to *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) to show that the claim is not abstract but the claims in that case were not similar in scope to those here in contrast and were in contrast directed to a self-referential data table.

The Appellants have also cited to *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), but the claims in that case are distinguished from this case in being directed to rules for lip sync and facial expression animation.

For these reasons the rejection of claim 1 is sustained. The Appellants have provided the same arguments for the remaining claims and the rejection of these claims is sustained as well.

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1–6, 8–12, 14, and 17–26 under 35 U.S.C. § 101.

DECISION

The Examiner's rejection of claims 1–6, 8–12, 14, and 17–26 is sustained.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED