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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YANG-MING ZHU, XIANGYU WU,
CHARLES A. NORTMANN, RONALD W. SUKALAC,
STEVEN M. COCHOFF, L. ALAN LOVE,
RICHARD CHENG-HSIU CHEN, CHRIS A. DAUTERMAN,
MADHAVI AHUJA, and DAWN M. MANIAWSKI

Appeal 2017-009782
Application 13/593,556
Technology Center 2600

Before JOHN A. JEFFERY, JOHN P. PINKERTON, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 68–74, 76–87, 89, and 91–93.² Claims 1–67 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify Koninklijke Philips Electronics N.V. as the real party in interest. App. Br. 4.

² Claims 75, 88, and 90 are objected to as being dependent upon a rejected base claim and are not before us. Final Act. 13. The Examiner finds these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. *Id.*

STATEMENT OF THE CASE

Introduction

Appellants' disclosed and claimed invention is generally directed to medical imaging systems and methods, particularly multi-modality systems, such as PET-CT systems. Spec. 1, ll. 6–8.³ The Specification explains that a positron emission tomography (PET) scanner “creates images of high metabolic activity in the body, rather than creating images of surrounding anatomy.” *Id.* at 1, ll. 12–14; 4, ll. 17–18. A computed tomography (CT) scanner allows “doctors to see the internal structures within the human body.” *Id.* at 1, ll. 13–14; 4, ll. 10.

Claim 68 is representative and reproduced below:

68. A medical imaging system comprising:

a display for displaying a user interface screen;

an interface component for controlling the user interface screen to display images of DICOM^[4] formatted medical imaging data;

one or more processors programmed to perform steps of:

³ Our Decision refers to the Final Office Action mailed June 27, 2016 (“Final Act.”); Appellants’ Appeal Brief filed Dec. 23, 2016 (“App. Br.”) and Reply Brief filed July 13, 2017 (“Reply Br.”); the Examiner’s Answer mailed May 16, 2017 (“Ans.”); and the original Specification filed Aug. 24, 2012 (“Spec.”).

⁴ “DICOM[®]—Digital Imaging and Communications in Medicine — is *the* international standard for medical images and related information. It defines the formats for medical images that can be exchanged with the data and quality necessary for clinical use.” *See* <https://www.dicomstandard.org/about/> (last accessed on May 7, 2018).

processing DICOM formatted medical imaging data into images;

defining attributes of a layout of series of images of DICOM formatted medical imaging data to be displayed on the display for a view by a user;

building a complete display protocol for selected image data based at least on the defined layout attributes, wherein the selected image data includes studies including series;

based on studies sorting rules, determining a succession in which the studies are to be displayed;

based on series role sorting rules, selecting a reference series in the study determined to be displayed first; and

based on series sorting rules and the selected reference series, determining a preferred order for series display.

App. Br. 31–32 (Claims App.).

Rejection on Appeal

Claims 68–74, 76–87, 89, and 91–93 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter. Final Act. 2–12.

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellants’ arguments in the Briefs and are not persuaded the Examiner erred. Unless otherwise noted, we adopt as our own the findings and reasons set forth by the Examiner in the Final Office Action from which this appeal is taken (Final Act. 2–12) and in the Examiner’s Answer (Ans. 2–57), and we concur

with the conclusions reached by the Examiner. For emphasis, we consider and highlight specific arguments as presented in the Briefs.

Applicable Law

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.” *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (internal quotation marks and citation omitted).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 75–77 (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 the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57. The “directed to” inquiry asks not whether “the claims *involve* a patent-ineligible concept,” but instead whether, “considered in light of the specification, . . . ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (internal citations omitted). In that regard, we determine whether the claims “focus on a specific means or method that improves the relevant technology” or are

“directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016) (internal citation omitted).

If, at the first stage of the *Alice* analysis, we conclude that the claim is not directed to a patent-ineligible concept, it is considered patent eligible under § 101 and the inquiry ends. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016).

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2350 (quoting *Mayo*, 566 U.S. at 79, 78). In other words, the second step is to “search for an ‘inventive concept’—*i.e.*, 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.’” *Id.* at 2355 (quoting *Mayo*, 566 U.S. at 72–73). The prohibition against patenting an abstract idea “‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant post-solution activity.’” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (internal citation omitted).

Examiner’s Findings and Conclusions

The Examiner finds that claim 68 is directed to “a system for building a display protocol based on the defined layout attributes and sorting rules for displaying DICOM formatted medical image data.” Ans. 4. In particular, the Examiner finds:

In other words, the claim describes a process of building a display protocol. A display protocol is merely organization of information to be displayed to the user. In other words, the claim recites comparing (sorting) and organizing information for display. This is simply the organization and comparison of data which can be performed mentally and is an idea by itself. It is similar to other concepts that have been identified as abstract by the courts, such as using categories to organize, store and transmit information in *Cyberfone*, or comparing new and stored information and using rules to identify options in *SmartGene*. Therefore, claim 68 is directed to an abstract idea.

Id.

Regarding step two of *Alice*, the Examiner concludes the claim elements, taken individually and collectively, do not amount to significantly more than the judicial exception. *Id.* at 5–7. Specifically, the Examiner finds:

The claim recites the additional limitations of a medical imaging system comprising a display for displaying a user interface screen, an interface component for controlling the user interface screen to display images and one or more processors for building the display protocol and processing DICOM formatted medical imaging data into images. Processing DICOM data into images is considered to be a generic computer process of converting images into a different format. The system comprising the display, interface component and the processor is recited at a high level of generality and in its broadest reasonable interpretation simply performs the generic computer functions of processing and displaying information routinely used in computer applications. These limitations merely indicate the claimed system is used in a computing environment. . . . Moreover, these additional limitations are well-understood, routine and conventional limitations that amount to mere instructions to implement the abstract idea of building a display protocol on a computer. Generic computer components recited as performing generic computer functions that are well-understood, routine and conventional activities amount to no more than

implementing the abstract idea with a computerized system. The use of generic computer components to display information through a user interface screen does not impose any meaningful limit on the computer implementation of the abstract idea. Thus, taken alone, the additional elements do not amount to significantly more than a judicial exception. 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.

Id. at 5–6.

*Appellants’ Arguments*⁵

Appellants argue that the Examiner’s rejection under § 101 “does not comply with the USPTO’s current subject matter eligibility guidance.” App. Br. 16–22. In particular, Appellants argue the Examiner fails to explain why each claim is unpatentable and be sufficiently clear and specific to provide sufficient notice of the reasons for ineligibility. *Id.* at 17–18. According to Appellants, the Examiner fails to compare the claims to other claims found to be directed to an abstract idea, and “only compares its *generalization* of

⁵ In the Conclusion of the Argument section of the Appeal Brief (*see* App. Br. at 25–29), Appellants refer to certain claims individually. Although independent claims 68, 78, 81, and 83 are separately mentioned, Appellants present substantially the same arguments for each of them and focus on claim 68 in the Appeal Brief. Similarly, although certain of the dependent claims are separately mentioned, Appellants merely recite that the limitations of each claim constitute an improvement in the field of medical image analysis and use a rule to arrive at a particular solution as in *McRO*. Thus, we consider the claims as a group. We consider claim 68 to be representative of the claimed subject matter on appeal and, therefore, we decide the rejection of the claims on the basis of representative claim 68. *See* 37 C.F.R. § 41.37(c)(1)(iv).

the alleged abstract idea (‘simply the organization and comparison of data’) to the *generalized* abstract ideas of *Cyberfone* and *SmartGene*.” *Id.* at 19. Appellants also argue the Examiner oversimplified the claims and failed to account for the “indications” the claims are directed to an improvement in computer-related technology, as in *McRO*. *Id.* at 20–22. Appellants further assert that because the Examiner did not follow the USPTO guidance, Appellants are not sufficiently on notice of the reasons for ineligibility and are unable to effectively respond. *Id.* at 22.

Regarding step one of the *Alice* or *Mayo* analysis, Appellants argue “the claims are directed to, in part, displaying a user interface on a display of a medical imaging system and an interface component for controlling the user interface screen to display images derived from DICOM formatted medical imaging data.” *Id.* at 23. Appellants also argue the claims here are “inextricably tied to computer technology and distinct from the types of concepts found by the courts to be abstract.” *Id.* at 24 (internal quotation marks and citation omitted). Appellants further argue the claims are analogous to those in *DDR Holdings, LLC* and are not “directed to ‘mental steps which can be carried out by a human using pen and paper.’” *Id.* (internal citation omitted). Regarding step two of the *Alice* or *Mayo* analysis, Appellants argue “the claimed features include improvements in medical imaging system user interfaces and layouts . . . [that] are not routine or conventional in the field of medical imaging, as evidenced by overcoming the prior art rejections.” *Id.* at 25. Appellants also argue that like the claims in *DDR Holdings*, the claims here recite a specific way to display a layout for a medical imaging system processing DICOM formatted data based on specific rules. *Id.*; Reply Br. 6. Thus, according to Appellants, “the claims

do recite additional elements that amount to more than any judicial exception and qualify as eligible subject matter under 35 U.S.C. § 101.” App. Br. 25; Reply Br. 6.

USPTO Guidelines and Prima Facie Rejection

First, we are not persuaded by Appellants’ arguments that the Examiner erred in concluding the claims are patent ineligible because the Examiner did not follow certain Patent Office subject matter eligibility guidelines. *See* App. Br. 16–22; Reply Br. 3–6. We have considered these guidelines, which are based on controlling case law and USPTO policy at the time the guidelines were issued. However, the Board applies relevant U.S. Supreme Court and Federal Circuit case law to the facts of each patent application on appeal.

Second, we are not persuaded by Appellants’ arguments that the Examiner did not explain why each claim is ineligible and provide sufficient notice of the reasons for ineligibility to enable Appellants to effectively respond. App. Br. 17–18, 22. Contrary to Appellants’ arguments, the Examiner analyzed each of the independent claims—68, 78, 81, 83, and 93—and explained the reasons that each claim is directed to an abstract idea and why the additional limitations of the claims do not amount to “significantly more” than the recited abstract idea. Final Act. 2–12. The Examiner also addressed all of the dependent claims and concluded they recite the same abstract idea as their respective independent claim and do not recite sufficient additional elements to amount to “significantly more” than the abstract idea. *See id.* at 4, 7, 8, 10.

The Examiner is merely required to provide Appellants reasonable notice as to the basis of the § 101 rejection. The notice requirement is set forth by 35 U.S.C. § 132.

[T]he PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in “notify[ing] the applicant . . . [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. That section “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

In re Jung, 637 F.3d 1356, 1362 (Fed. Cir. 2011). Here, the Examiner stated the statutory basis for the rejection and performed the two-part *Alice* test. *See* Final Act. 2–12. Thus, we conclude the Examiner provided an adequate explanation of the rejection under § 101 and met the notice requirement of 35 U.S.C. § 132.

Third, we are not persuaded by Appellants’ arguments that the Examiner oversimplified the claims and failed to consider “indications” of how the claimed invention improves computerized technology, as in *McRO*. *See* App. Br. 20–22; Reply Br. 5. Contrary to Appellants’ arguments, we find the Examiner considered the claim limitations in reasonably sufficient detail, including the recited layout attributes and sorting rules. *See* Ans. 2–7; Final Act. 2–4. We also are not persuaded that Appellants’ claims produce an improvement in computer-related technology, as in *McRO*. The claims in *McRO* recited a “specific . . . improvement in computer animation” using “unconventional rules that relate[d] sub-sequences of phonemes, timings, and morph weight sets.” *McRO*, 837 F.3d at 1302–03, 1307–08, 1314–15.

Moreover, it was not the mere presence of unconventional rules in *McRO* that led to patent eligibility; rather, it was that the rules were used “in a process specifically designed to achieve an improved technological result.” *McRO*, 837 F.3d at 1316. Here, Appellants have not shown how the claimed sorting rules are used in a process to achieve an improved technological result. Although Appellants argue that the descriptions in the Specification that the display protocol “can be built on the fly” and “the optimal layout is automatically selected based on the data selection” (*see* App. Br. 21–22) describe improvements in computer-related technology, claim 68 does not specify any specific rules or steps that improve an “existing technological process.” *McRO*, 837 F.3d at 1313–14.

Alice Step One

We also are not persuaded by Appellants’ arguments that the Examiner erred in concluding claim 68 is directed to patent-ineligible subject matter—an abstract idea. Claim 68 recites a medical imaging system comprising: (1) a display for displaying a user interface screen; (2) an interface component to display images of DICOM formatted medical imaging rules; (3) one or more processors to perform the steps of— (a) processing DICOM image data into images, (b) defining attributes of a layout of a series of images of DICOM data to be displayed, (c) building a display protocol for selected image data based on the defined layout attributes, wherein the data includes studies including series, (d) determining a succession in which the studies are to be displayed based on studies sorting rules, (e) selecting a reference series to be displayed first based on series sorting rules, and (f) determining a preferred order for series display based on series sorting rules. App. Br. 31–32 (Claims App.). The Examiner finds

claim 68 describes a process of building a display protocol, which is merely the organization of information to be displayed to the user. Ans. 4, 7.

Consistent with the Examiner’s findings, we find claim 68 recites a display, an interface component to display images, and a processor to process image data, and identifying and organizing data into a format or protocol for display.

Considering claim 68 as a whole, we agree with the Examiner’s conclusion that claim 68 is directed to an abstract idea—the idea of building a display protocol based on defined layout attributes and sorting rules for displaying DICOM formatted medical image data. We see no meaningful difference in claim 68 and similar or analogous claims in other cases that our reviewing court has found are directed to an abstract idea. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“The concept of data collection, recognition, and storage is undisputedly well-known”); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (claims focus on the abstract idea of collecting information, analyzing it, and displaying certain results of the collection and analysis); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (holding that the claimed invention is directed “to the abstract idea of collecting, displaying, and manipulating data of particular documents”).

The Examiner also concluded that the display protocol of claim 68 “is simply the organization and comparison of data which can be performed mentally and is an idea by itself.” Ans. 4. Contrary to Appellants’ argument (*see App. Br. 24*), we also conclude that the steps recited in claim 68 could be “performed mentally” by a human with pen and paper. In that regard, our

reviewing court has held that “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, . . . [are] essentially mental processes within the abstract-idea category.” *Elec. Power*, 830 F.3d at 1354; *see also Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146 (Fed. Cir. 2016). “[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.” *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012).⁶

We are also not persuaded by Appellants’ arguments that the claims are, in part, directed to a “user interface” and “an interface component for controlling the user interface screen” and that the claims are “inextricably tied to computer technology” and distinct from claims found to be abstract. App. Br. 23–24. Appellants have not identified any disclosure in the Specification, or provided other persuasive evidence or technical reasoning, of a technological advance or improvement in the claimed user interface and interface component. Although claim 68 utilizes computer technology, for the reasons discussed *supra*, we are not persuaded that claim 68 produces an improvement in computer-related technology, as in *McRO*. In that regard, Appellants have not identified any disclosure in the Specification, or provided other persuasive evidence or technical reasoning, that the hardware or software components of claim 68, including the “layout attributes” and

⁶ *See also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*”).

“sorting rules,” provide a technological advance or improvement to computer technology or data processing. Nor do the claims recite any such technologic advance or improvement.

We also are not persuaded by Appellants’ argument that the claims are analogous to those in *DDR Holdings*. App. Br. 24. In *DDR Holdings*, the disputed claims solved an Internet-specific problem with an Internet-based solution that was “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR Holdings, LLC v. Hotels.com L.P.*, 773 F.3d 1245, 1257–58 (Fed. Cir. 2014). According to the Federal Circuit, “*DDR Holdings* does not apply when . . . the asserted claims do not ‘attempt to solve a challenge particular to the Internet.’” *Smart Sys. Innovations, LLC v. Chi. Transit Auth.*, 873 F.3d 1364, 1375 (Fed. Cir. 2017) (quoting *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016)). The claims here do not attempt to solve such a challenge particular to the Internet.

Alice Step Two

We also are not persuaded by Appellants’ arguments regarding step two of the *Alice* analysis. First, Appellants argue the claimed features include improvements that “are not routine or conventional in the field of medical imaging, as evidenced by overcoming the prior art rejections.” App. Br. 25. However, 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 in the *Mayo/Alice* framework 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 (quoting *Mayo*, 566 U.S. at 72–73). “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘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”).

Second, Appellants again argue the claims here are much like those in *DDR Holdings* because they recite a specific way to display a layout for medical imaging data, including those based on specific rules. App. Br. 25. As previously discussed, however, *DDR Holdings* is not persuasive because Appellants’ claims do not “attempt to solve a challenge particular to the Internet.” *Smart Sys.*, 873 F.3d at 1375 (internal quotation marks and citation omitted). Additionally, as discussed *supra*, Appellants have not provided persuasive evidence or technical reasoning establishing that there are any technological advances or improvements in claim 68’s computer hardware, software, or image data processing system. Claim 68 does not “focus on a specific means or method that improves the relevant technology,” but is “directed to a result or effect that itself is the abstract idea and merely invoke[s] generic processes and machinery.” *McRO*, 837 F.3d at 1314. This is not enough to transform an abstract idea into patent-

eligible subject matter. *See, e.g., Alice*, 134 S. Ct. at 2360 (explaining that claims that “amount to ‘nothing significantly more’ than an instruction to apply the abstract idea . . . using some unspecified, generic computer” “is not ‘*enough*’ to transform an abstract idea into a patent-eligible invention” (quoting *Mayo*, 566 U.S. at 77, 79)); *Intellectual Ventures*, 850 F.3d at 1342 (“[T]he claim language here provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it”).

As indicated *supra*, the Examiner finds, and we agree, there is nothing in the limitations of claim 68, considered “both individually and as an ordered combination,” that transforms the claimed abstract idea into patent-eligible subject matter. Accordingly, for the reasons discussed above, we sustain the Examiner’s rejection of claim 68 under § 101. For the same reasons, we sustain the rejection of independent claims 78, 81, 83, and 93, and dependent claims 69–74, 76, 77, 79, 80, 82, 84–87, 89, 91, and 92.

DECISION

We affirm the Examiner’s rejection of claims 68–74, 76–87, 89, and 91–93 under 35 U.S.C. § 101.

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). *See* 37 C.F.R. § 1.136(a)(1)(iv)(2016).

AFFIRMED