



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/905,943	05/30/2013	KRISTIN D. JOHNSON	H-EB-00545 (203-9173)	5723
90039	7590	11/29/2018	EXAMINER	
Covidien LP Attn: IP Legal 5920 Longbow Drive Mail Stop A36 Boulder, CO 80301-3299			GO, JOHN P	
			ART UNIT	PAPER NUMBER
			3686	
			NOTIFICATION DATE	DELIVERY MODE
			11/29/2018	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mail@cdfslaw.com  
rs.patents.two@medtronic.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* KRISTIN D. JOHNSON, STEPHEN J. PACK,  
SCOTT F. ALEXANDER, DAVID BERLIN, and  
CHRISTOPHER T. RUSIN<sup>1</sup>

---

Appeal 2017-010085  
Application 13/905,943  
Technology Center 3600

---

Before CAROLYN D. THOMAS, CARL W. WHITEHEAD JR., and  
MICHAEL J. STRAUSS, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

---

<sup>1</sup> According to Appellants, the real party in interest is Covidien LP, a wholly-owned subsidiary of Medtronic PLC. *See* App. Br. 1.

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–21. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.<sup>2</sup>

## THE INVENTION

The claims are directed to tracking the location and activities of a patient. Spec., Abstract. Claim 1, reproduced below, is representative of the claimed subject matter:

1. A system for tracking the location and activities of a patient, the system comprising:

    a patient location identification device associated with a patient;

    a patient data server including at least one server application executable on a computer, the patient data server remotely located from the patient location identification device wherein the patient data server and patient location identification device are configured to dynamically communicate with each other through the at least one server application; and

    a patient medical data file residing in at least one of the patient location identification device or the patient data server, the patient medical data file configured to maintain a plurality of recordable events generated by the patient location identification device based on the patient's location,

    wherein the patient location identification device is configured to generate a recordable event when the patient location identification device enters a location within an electronic communication range of a medical device configured to perform at least one of a treatment or a medical test, and

---

<sup>2</sup> We refer to the Specification, filed May 30, 2013 (“Spec.”); the Final Office Action, mailed Sept. 22, 2016 (“Final Act.”); Appeal Brief, filed Feb. 15, 2017 (“App. Br.”); and the Examiner’s Answer, mailed May 17, 2017 (“Ans.”). The Reply Brief filed July 17, 2017 is noted but it is not cited herein.

wherein the server receives and saves a corresponding recordable event generated by the medical device when the patient location identification device enters the electronic communication range of the medical device.

#### REFERENCES

The following prior art is relied upon by the Examiner in rejecting the claims on appeal:

Nemeth et al.	US 2002/0016719 A1	Feb. 7, 2002
Hickle et al.	US 2003/0074223 A1	Apr. 17, 2003
Baharav et al.	US 2004/0220829 A1	Nov. 4, 2004
Zaleski et al.	US 2005/0021376 A1	Jan. 27, 2005
Donoghue et al.	US 2006/0004605 A1	Jan. 5, 2006
Crump et al.	US 2006/0202816 A1	Sept. 14, 2006
Cobbs et al.	US 2007/0094045 A1	Apr. 26, 2007
Alvarez et al.	US 2007/0194939 A1	Aug. 23, 2007
Ballai	US 2008/0126126 A1	May 29, 2008
Sharma	US 2008/0242944 A1	Oct. 2, 2008
Beraja et al.	US 2010/0274582 A1	Oct. 28, 2010
Abbo	US 2010/0293003 A1	Nov. 18, 2010
Coulter et al.	US 2011/0054946 A1	Mar. 3, 2011

#### REJECTIONS

The Examiner made the following rejections<sup>3</sup>:

Claims 1–21 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (e.g., an abstract idea) without significantly more. Final Act. 3–7.

Claims 1, 2, 8, 12–15, and 21 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, and Crump. Final Act. 7–17.

---

<sup>3</sup> The rejection of claims 15–21 under 35 U.S.C. § 112, second paragraph, has been withdrawn. Advisory Action mailed Dec. 1, 2016.

Claims 9 and 10 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, Crump, and Baharav. Final Act. 17–18.

Claim 3 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, Crump, and Coulter. Final Act. 18–19.

Claim 4 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, Crump, and Donoghue. Final Act. 19–20.

Claims 5 and 6 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, Crump, and Cobbs. Final Act. 21–22.

Claim 7 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, Crump, Cobbs, and Abbo. Final Act. 22–23.

Claim 11 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, Crump, and Alvarez. Final Act. 23–24.

Claim 16 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, Crump, and Beraja. Final Act. 24–26.

Claim 17 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, Crump, and Zaleski. Final Act. 26–27.

Claim 18 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, Crump, and Hickle. Final Act. 27–28.

Claims 19 and 20 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Nemeth, Sharma, Crump, and Hickle. Final Act. 28–30.

## ANALYSIS

Appellants' contentions are unpersuasive of reversible Examiner error. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 3–33) and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief (Ans. 2–6) and concur with the conclusions reached by the Examiner. We highlight the following for emphasis.

### 35 U.S.C. §101 Rejection

The Supreme Court has set forth an analytical “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 Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71–73 (2012)). In the first step of the analysis, we determine whether the claims at issue are “directed to” a judicial exception, such as an abstract idea. *Alice*, 134 S. Ct. at 2355. If not, the inquiry ends. *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1346 (Fed. Cir. 2017); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). If the claims are determined to be directed to an abstract idea, then we consider under step two whether the claims contain an “inventive concept” sufficient to “transform the nature of the claim into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quotations and citation omitted).

Noting that the two stages involve “overlapping scrutiny of the content of the claims,” the Federal Circuit has described “the first-stage inquiry” as “looking at the ‘focus’ of the claims, their ‘character as a

whole,” and “the second-stage inquiry (where reached)” as “looking more precisely at what the claim elements add--specifically, whether, in the Supreme Court’s terms, they identify an ‘inventive concept’ in the application of the ineligible matter to which (by assumption at stage two) the claim is directed.” *Electric Power Grp, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). In considering whether a claim is directed to an abstract idea, we acknowledge, as did the Court in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. We, therefore, look to: (1) whether the claims focus on a specific means or method that improves the relevant technology, or (2) are directed to a result or effect that itself is the abstract idea, in which the claims merely invoke generic processes and machinery. *See Enfish*, 822 F.3d at 1336.

Step One: Whether the Claims Are Directed to a Patent-  
Ineligible Concept (Abstract Idea)

The Examiner finds the claims “are directed to the abstract idea of recording patient event data.” Final Act. 4. Addressing the claimed steps, the Examiner explains:

communicating and recording patient data into a patient medical data file, wherein the patient medical data file includes event data based on patient location data is an abstract idea because it may be further characterized as comparing new and stored information (i.e. patient location data) and using rules to identify options (i.e. whether or not to generate and store event data based on the patient location data).

*Id.* at 4–5. The Examiner likens the claims to those determined to encompass abstract ideas in *Smartgene*<sup>4</sup>, *Dealertrack*<sup>5</sup>, *Cyberfone*<sup>6</sup>, and *Cybersource*<sup>7</sup>. *Id.* at 5. Appellants contend “[t]he Examiner, in his analysis, has failed to consider the claims as a whole and instead relied upon too high a level of abstraction in an attempt to shoehorn the claims to fit inapplicable judicially recognized ineligible subject matter.” App. Br. 7.

Appellants’ argument is unpersuasive of reversible Examiner error. The Federal Circuit has repeatedly held that information collection and analysis, including when limited to particular content, is within the realm of abstract ideas.<sup>8</sup> According to Appellants the “disclosure relates generally to

---

<sup>4</sup> *SmartGene, Inc. v. Advanced Biological Laboratories, S.A.*, 555 F. App’x 950, 954–56 (Fed. Cir. 2014) (claims drawn to abstract idea of comparing new and stored information and using rules to identify options).

<sup>5</sup> *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012) (claims directed to abstract idea of processing loan information through a clearinghouse).

<sup>6</sup> *Cyberfone Systems, LLC v. CNN Interactive Group, Inc.*, 558 F. App’x 988, 991–92 (Fed. Cir. 2014) (non-precedential) (claims involving collecting data, recognizing certain data in the set, and storing recognized data in memory are directed to an abstract idea).

<sup>7</sup> *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011) (computer-implemented system for “verifying the validity of a credit card transaction over the Internet” directed to patent-ineligible abstract idea of obtaining and comparing intangible data).

<sup>8</sup> *See, e.g., Elec. Power*, 830 F.3d at 1353 (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent-ineligible concept”); *Fair Warning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (claims directed to collecting information and analyzing it according to certain rules were directed to an abstract idea); *In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 612 (Fed. Cir. 2016) (claims for classifying an image and storing the image based on its classification directed to an abstract idea); *In re Salwan*, Appeal No. 2016-2079, 2017 WL 957239 at \*3 (Fed. Cir. Mar. 13, 2017) (affirming the

an apparatus, systems and methods for tracking the location and activities of patients in a medical facility and an apparatus, system and methods for an individual to maintain, organize and/or track patients' medical records and other related records.” Spec. ¶ 2, Technical Field. Thus, the Examiner’s characterization of the invention as being directed to recording patient event data is consistent with Appellants’ disclosure.

We disagree the Examiner has relied upon too high a level of abstraction in determining the claims are directed to an abstract idea. App. Br. 7. In articulating the subject matter to which the claims are directed, we note “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–41 (Fed. Cir. 2016). There is no definitive rule to determine what constitutes an “abstract idea.” Rather, our reviewing court has explained that “both [it] and the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases.” *Enfish*, 822 F.3d at 1334. In that regard, we agree with the Examiner claim 1, when viewed as a whole, is similar to the ideas identified as abstract in in *Smartgene*, *Dealertrack*, *Cyberfone*, and *Cybersource* (Final Act. 5) and to other cases as identified above (*see* fn. 8). Contrary to

---

rejection under § 101 of claims directed to “storing, communicating, transferring, and reporting patient health information,” noting that “while these concepts may be directed to practical concepts, they are fundamental economic and conventional business practices”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (claims reciting a “scanner” are nevertheless directed to an abstract idea); and *Mortg. Grader, Inc. v. First Choice Loan Serv. Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016) (claims reciting an “interface,” “network,” and a “database” are nevertheless directed to an abstract idea).

Appellants' arguments, the Examiner has identified the appropriate judicial exceptions of "comparing new and stored information" and "using rules to identify options" and the Examiner has compared the claimed concepts of independent claim 1 to appropriate Supreme Court and Federal Circuit decisions. In arguing "the Examiner failed to consider or discuss the specific components of independent claim 1" (App. Br. 7) Appellants are improperly conflating part one of the *Alice* test with part two of the *Alice* test, which includes consideration of an element or combination of elements to determine if the claim recites "additional features."

For the reasons discussed above, we disagree the Examiner erred in determining the independent claims are directed to an abstract idea under Step 1 of the *Alice* test. Therefore, we turn to the second step of the *Alice* test, in which we must determine whether the additional elements of the claims transform them into patent-eligible subject matter.

Step Two: Whether Additional Elements Transform the Idea  
into Patent-Eligible Subject Matter

Appellants contend "the Examiner has failed to consider all of the additional features of independent claim 1 to determine whether those features amount to significantly more than the proposed abstract idea." App. Br. 10. Appellants argue, "[t]he Examiner provided no explanation as to why the individual [claim] elements could not amount to significantly more through unique use or combination." *Id.* The Examiner responds, explaining:

The claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements or combination of

elements in the claims (e.g. the structural components such as the medical device, location identification device, and server, and contents of the data), other than the abstract idea per se, amount to no more than a recitation of

A) generally linking the abstract idea to a particular technological environment (i.e. a computer, server, and/or medical device) or field of use (i.e. healthcare);

B) adding insignificant extrasolution activity to the abstract idea, for example mere data gathering (e.g. receiving patient location and medical data); and

C) generic computer structure.

Final Act. 5–6. The Examiner cites to numerous portions of Appellants’ disclosure in support of the finding the claims only require generic computer structures (item (C) above) rather than, for example, specialized devices or structures. *Id* at 6.

Appellants’ naked contention is unpersuasive of error in the Examiner’s determination the claims do not include additional elements sufficient to amount to significantly more than the judicial exception. Appellants fail to direct attention to any specific features that are other than the application of the abstract idea on a computer system. Merely automating a process using a computer does not make a claimed invention patentable. *See Alice Corp.*, 134 S. Ct. at 2358 (“[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.”) (citations omitted); *See* Appeal Brief 11. Appellants do not argue, nor does Appellants’ Specification disclose, that the claimed system for tracking the location and activities of a patient requires specialized or improved technology.

To the contrary, tracking the location and activities of a patient is the type of activity that can be performed mentally and/or manually using pen and paper. The automation of such activity does not transform an otherwise abstract idea into patent-eligible subject matter. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (“[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.”); *see also Intellectual Ventures I LLC v. Capital One Bank*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (“[O]ur precedent is clear that merely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea.”); *Alice*, 134 S. Ct. at 2358–59 (Claims “simply instructing the practitioner to implement the abstract idea of intermediated settlement on a generic computer” not patent eligible); *Elec. Power*, 830 F.3d at 1355 (“Merely requiring the selection and manipulation of information--to provide a ‘humanly comprehensible’ amount of information useful for users . . . by itself does not transform the otherwise-abstract processes of information collection and analysis.”).

Similarly, other features of the claim are likewise insufficient to transform the abstract idea into patent-eligible subject matter. For example, the claimed patient location identification device may be an RFID device (Spec. ¶ 14) and, as such, merely limits the abstract idea to a particular technological environment. *See, e.g., Content Extraction*, 776 F.3d at 1348. We are unpersuaded the claim limitations relating to computer components are other than conventional, well known and routine in the art of computer science or that the claim limitations constitute an improvement to the technology or an improvement to the functioning of the computer itself.

Thus, the claim limitations do not amount to significantly more than the judicial exception itself.

For the reasons discussed, Appellants' contentions are unpersuasive of Examiner error in determining the claims are ineligible as directed to a judicial exception (e.g., an abstract idea) without significantly more. Accordingly, we sustain the rejection of claims 1–21 under 35 U.S.C. § 101.

### 35 U.S.C. § 103(a) Rejection

Appellants contend the prior art fails “to teach or suggest ‘recordable events generated by the patient location identification device based on the patient’s location,’” as required by the independent claims. App. Br. 11. Appellants argue Nemeth fails to teach or suggest recordable events are generated based on the patient’s location. *Id* at 12. Appellants argue Sharma is deficient because “Sharma’s device does not broadcast its location, an event, or a saved item, based on information contained within the RFID tag coupled to a patient.” *Id*.

The Examiner responds, finding Nemeth discloses determining patient location and meals (i.e., “events”). Ans. 5, citing Nemeth ¶¶ 2, 44–46. Because Nemeth “does not disclose that the meals (i.e. events) are based on the location data,” the Examiner applies Sharma’s teaching of generating an error signal (i.e., the claimed event) when a patient is proximate certain medical equipment (i.e., based on patient location) for teaching the missing subject matter. *Id* at 5–6. Thus, the Examiner relies on the combination of Nemeth’s teaching of patient location and event tracking and Sharma’s generation of an event based on location for teaching or suggesting the disputed limitation. *Id* at 6.

Appellants' contention is unpersuasive because it fails to address the Examiner's findings. The argued deficiency of Nemeth to generate events based on a patient's location does not contradict the Examiner's findings because the Examiner relies on Sharma, not Nemeth, for basing event generation on location. Thus, Appellants' argument is an improper attack on the references individually where the rejection is based on the combination of references. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, Appellants' argued deficiencies of Sharma including that "Sharma's device does not broadcast its location, an event, or a saved item, based on information contained within the RFID tag coupled to a patient" (App. Br. 12–13) are unpersuasive because the argued deficiencies are not commensurate in scope with the claims, which do not require broadcasting of information.

Appellants further contend Nemeth is deficient for failing to "teach or suggest 'generat[ing] a recordable event when the patient location identification device enters a location within an electronic communication range of a medical device,' as also recited in independent claim 1." App. Br. 12. Appellants argue Sharma is similarly deficient. *Id* at 13.

Appellants' contention is unpersuasive because it is not supported by sufficient analysis of the Examiner's findings addressing the disputed limitation (Final Act. 8–10). Merely reciting a claim limitation and asserting it is not present falls short of identifying an error in the Examiner's rejection as required on appeal. Arguments must address the Examiner's action. 37 C.F.R. § 41.37(c)(1)(iv) ("The arguments shall explain why the examiner erred as to each ground of rejection contested by appellant."); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) ("[T]he Board reasonably interpreted

Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art”).

For the reasons discussed above, Appellants’ contentions of error in connection with the rejection of independent claim 1 and 15 are unpersuasive and we sustain the rejection of those claims under 35 U.S.C. § 103(a). Appellants do not address dependent claims 2–14 and 16–21 separately with particularity. *See* App. Br. 13–18. Accordingly, we sustain the rejections of dependent claims 2–14 and 16–21 for the reasons set forth in connection with independent claims 1 and 15.

#### DECISION

The Examiner’s 35 U.S.C. § 101 rejection of claims 1–21 is affirmed.

The Examiner’s 35 U.S.C. § 103 rejections of claims 1–21 are 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). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED