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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT H. LORSCH

Appeal 2017-010566¹
Application 14/512,745
Technology Center 3600

Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1–17. We have jurisdiction to review the case under 35 U.S.C. §§ 134(a) and 6(b).

The invention relates generally to online medical records. Spec. 1: 13.

Claim 1 is illustrative:

¹ The Appellant identifies MyMedicalRecords, Inc. as the real party in interest. Appeal Br. 5.

1. A method for providing emergency access to personal health information of a patient in case of emergency, the method comprising:

maintaining a set of personal health information for the patient on a computer readable storage medium of a server;

providing a user interface to the patient for accessing and controlling the set of personal health information using a computing device in operative communication with the server over a network;

receiving from the patient and through the user interface instructions specifying a subset of the personal health information to display in case of emergency;

displaying on a screen display a screen element indicative of an emergency;

receiving, from a person, a selection of the screen element indicative of an emergency, wherein the receiving of the selection of the screen element indicative of the emergency causes the server, through the network, to provide an online form to collect contact information from the person;

collecting contact information from the person making the selection of the screen element indicative of the emergency and through the online form and receiving the emergency access to the subset of the personal health information; and

after receiving the selection of the screen element indicative of the emergency and after collecting the contact information, selectively providing access to the subset of the personal health information from the server.

The Examiner rejected claims 1–17 under 35 U.S.C. § 101 as directed to ineligible subject matter in the form of abstract ideas.

The Examiner rejected claims 1, 3, 4, 8, 9, 11, and 12 under 35 U.S.C. § 103(a) as unpatentable over Mok et al. (US 7,647,320 B2, iss. Jan. 12, 2010) (“Mok”) and Ricci (US 2005/0128091 A1, pub. June 16, 2005).

The Examiner rejected claims 2, 5–7, 10, and 13–15 under 35 U.S.C. § 103(a) as unpatentable over Mok, Ricci, and Trice (US 2002/0120470 A1, pub. Aug. 29, 2002).

The Examiner rejected claims 16 and 17 under 35 U.S.C. § 103(a) as unpatentable over Mok, Ricci, and Foladare et al. (US 2009/0176476 A1, pub. July 9, 2009) (“Foladare”).

We AFFIRM.

ANALYSIS

Patentable subject matter

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 implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In determining whether a claim 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.*, 566 U.S. 66, 76–78 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (“Analyzing respondents’ claims according to the above statements from our cases, we think that a physical and chemical process for molding precision synthetic

rubber products falls within the § 101 categories of possibly patentable subject matter.”); *Parker v. Flook*, 437 U.S. 584, 594–95 (1978) (“Respondent’s application simply provides a new and presumably better method for calculating alarm limit values.”); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972) (“They claimed a method for converting binary-coded decimal (BCD) numerals into pure binary numerals.”).

The patent-ineligible end of the spectrum includes fundamental economic practices, *Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611; mathematical formulas, *Parker*, 437 U.S. at 594–95; and basic tools of scientific and technological work, *Gottschalk*, 409 U.S. at 69. On the patent-eligible side of the spectrum are physical and chemical processes, such as curing rubber, *Diamond*, 450 U.S. at 192, “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores,” *id.* at 184 n.7, and a process for manufacturing flour, *Gottschalk*, 409 U.S. at 69.

If the claim is “directed to” a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2355. 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.*

In addition, the Federal Circuit has held that if a method can be performed by human thought alone, or by a human using pen and paper, it is merely an abstract idea and is not patent-eligible under § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (“[A]

method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”).

Claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (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”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016).

Claims that recite an improvement to a particular computer technology have been found patent eligible. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (determining claims not abstract because they “focused on a specific asserted improvement in computer animation”).

The Examiner determines that the claims are directed to a method of using categories to organize, store, and transmit information. Final Act. 2. Additionally, the Examiner determines the claims involve collecting, displaying, and manipulating data. Answer 3.

We are unpersuaded by the Appellant’s argument that the claims are not directed to organizing, storing, and transmitting information, because the limitations of receiving a selection of a screen element indicative of an emergency and providing access after receiving the selection are not accounted for. Appeal Br. 14. The Appellant also argues that receiving instructions from a user interface to select a subset of information to make available when requested is more than the abstract idea to which the claim is

determined to be directed, because it is “directed to a specific purpose.”
Reply Br. 15.

Receiving and responding to a request for a category of saved information is merely a way to organize and transmit some of the information that is stored, by responding to a request for some of the data. In addition, this step of receiving and responding to a subset of the data, and classifying a subset of data as “emergency,” is merely like other claims found to be abstract, where “the gist of the claim involves a user entering a request for access, looking up the rule for access, determining what information is needed to apply the rule, obtaining that information, and then applying the information to the rule to make a decision.” *Jericho Sys. Corp. v. Axiomatics, Inc.*, 2015 WL 2165931, at *4 (N.D. Tex. May 7, 2015), *aff’d*, 642 Fed. Appx. 979 (Fed. Cir. 2016). The claim is also similar to those found to be abstract as “an abstract process that includes (1) receiving identity data from a device with a request for access to resources; (2) confirming the authenticity of the identity data associated with that device; (3) determining whether the device identified is authorized to access the resources requested; and (4) if authorized, permitting access to the requested resources.” *Prism Technologies LLC v. T-Mobile USA, Inc.*, 696 Fed. Appx. 1014, 1017 (Fed. Cir. 2017), *cert. denied*, 138 S. Ct. 689, 199 L. Ed. 2d 538 (2018).

Thus, in spite of the Appellant’s arguments directed to the recitation of setting aside a subset of information, or having a user request that information, the claims are merely directed to abstract ideas of handling data. *See Elec. Power Grp.*, 830 F.3d at 1353.

We are also unpersuaded that the claims are not directed to abstract ideas because they do not preempt all ways of collecting, displaying, and manipulating data. Reply Br. 15–16. “While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”). And, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa*, 788 F.3d at 1379.

The Appellant has therefore failed to show error in the Examiner’s rejection of claims as being directed to abstract ideas, and not reciting something more that transforms the abstract ideas into eligible subject matter. For this reason, we sustain the rejection of claims under 35 U.S.C. § 101.

Obviousness Rejection of Claims 1, 3, 4, 8, 9, 11, and 12

Each of independent claims 1 and 9 recites language substantially similar to the following steps:

displaying on a screen display a screen element indicative of an emergency;

receiving, from a person, a selection of the screen element indicative of an emergency, wherein the receiving of the selection of the screen element indicative of the emergency causes the server, through the network, to provide an online form to collect contact information from the person;

after receiving the selection of the screen element indicative of the emergency and after collecting the contact information, selectively providing access to the subset of the personal health information from the server.

The Examiner relies on Ricci as disclosing these steps, at paragraphs 7, 8, 14, 15, and 20. Final Act. 4–5. We are persuaded by the Appellant’s arguments that Ricci fails to disclose any of the steps. Appeal Br. 20–23.

Ricci is directed to a method of storing and transporting personal medical information on a personal storage device in word processing or PDF format, so a medical provider can access it by using the device on a computer, via a “menu application.” Ricci ¶ 14. Ricci, thus, may present a screen, but selection of an item on the screen does not cause an online form for collecting contact information to appear, the receipt of which causes access to the information, as claimed. Instead, when medical personnel need the information on the device (such as a USB memory device, per Ricci’s ¶ 15), the information is just accessed by computer. *Id.* ¶ 22.

Thus, the Examiner has failed to support adequately that Mok and Ricci disclose the subject matter of the independent claims. For this reason, we do not sustain the rejection of the claims as obvious over Mok and Ricci.

Obviousness Rejections of Claims 2, 5–7, 10, and 13–17

The Examiner does not establish on the record that Trice or Foadare remedy the shortcomings in the combination of Mok and Ricci. For this reason, we do not sustain the rejections that additionally rely on these references.

DECISION

We affirm the rejection of claims 1–17 under 35 U.S.C. § 101.

We reverse the rejections of claims 1–17 under 35 U.S.C. § 103(a).

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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