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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES E. ROSS JR. and WILLIAM J. LYNCH

Appeal 2017-010962
Application 12/201,986¹
Technology Center 3600

Before ANTON W. FETTING, BIBHU R. MOHANTY, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Oral arguments were presented January 10, 2020.

STATEMENT OF THE CASE²

James E. Ross Jr. and William J. Lynch (Appellant³) seeks review under 35 U.S.C. § 134 of a final rejection of claims 37–56, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellant invented a medical records, documentation, tracking, and order entry system. Spec. 1: 1–2.

An understanding of the invention can be derived from a reading of exemplary claims 37 and 49, which are reproduced below (bracketed matter and some paragraphing added).

37. A computer-implemented method

for maintaining electronic access to electronic order entries maintained on an electronic database, the electronic order entries corresponding to medical tasks that are to be performed or have been performed by medical staff on identified patients,

the method comprising for each task performed on a patient the steps of:

[1] adding a first medical order entry, corresponding to a task to be performed on a patient, to an electronic patient database

and

² Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.,” filed February 15, 2017) and Reply Brief (“Reply Br.,” filed August 21, 2017), and the Examiner’s Answer (“Ans.,” mailed June 19, 2017), and Final Action (“Final Act.,” mailed March 16, 2016).

³ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as RLIS, Inc. (Appeal Br. 1).

[2] setting a status indicator on the first medical order entry indicative of a need for completion of the task by medical staff;

[3] presenting, in accordance with a query executed on the electronic patient database, a listing of multiple tasks to be performed in accordance with status indicators on ones of multiple medical order entries, wherein individual ones of the status indicators identify a need for completion of a specified task;

and

[4] selecting, by medical staff from the listing of multiple tasks to be performed, the task corresponding to the first medical order entry

and

[5] modifying the status indicator, for the first medical order entry in the electronic patient database, to a clear status to indicate completion of the task associated with the first medical order entry.

49. A method of providing access to patient record documentation, patient tracking and order entry information in a system capable of rendering patient information in a variety of presentation views, comprising the steps of:

[1] maintaining a database comprising a set of active patient records, each patient record having fields for storing a set of related information including:

room location, patient's name, patient's physician, nursing orders, patient priority and elapsed time of stay, status of X-rays, labs, tests, nurses' orders, vital signs, patient complaints, and patient diagnoses;

[2] logging a user on to a peripheral terminal,

[3] maintaining a variety of presentation view definitions, individual ones of the variety of presentation view definitions specifying a task-driven presentation of patient information including information for each one of multiple patients, the presentation view definitions defining both content and a display arrangement of patient information, for each one of the

multiple patients, from the set of related information according to a task to be performed by the user identified during the logging step,

and

[4] displaying, at the peripheral terminal upon completing the logging step, a name of the user and an active patient list view presenting patient list information for each of the multiple patients retrieved from the set of active patient records, the content and arrangement of the patient list information for the multiple patients on the active patient list view being determined by a designated one of the variety of presentation views.

The Examiner relies upon the following prior art:

Name	Reference	Date
Engleson	US 5,781,442	July 14, 1998

Dr. Morris F. Collen, Hospital Computer Systems, 38–41, 53–56, 68–76, 86–87, 106, 115–45, 167, 285–93,482, 520–21, 530–36, 614–20, 622, 689, 711–12 (1974) (hereinafter "Collen").

Claims 37–48 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 37–49 and 54–56 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Collen.

Claim 50 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Collen and Engleson.

Claims 51–53 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Collen and Official Notice.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of results desired.

The issues of obviousness turn primarily on the breadth of the claim limitations argued.

ANALYSIS

Claims 37–48 and 49–56 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more

Only claims 37–48 currently stand rejected under this ground. We extend the scope of this rejection to include claims 49–56 as a new ground under 37 C.F.R. § 41.50(b).

STEP 1⁴

Claim 37, as a method claim, nominally recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. The issue before us is whether it is directed to a judicial exception without significantly more.

STEP 2

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us? To answer that question, . . . consider the elements of each 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. [The Court] described step two of this analysis as a search for an “‘inventive concept’”—i.e., an element or combination of elements that is “sufficient to ensure

⁴ For continuity of analysis, we adopt the steps nomenclature from 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”).

that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.”

Alice Corp. v. CLS Bank Int’l, 573 U.S. 208, 217–18 (2014) (citations omitted) (citing *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66 (2012)). To perform this test, we must first determine what the claims are directed to. This begins by determining whether the claims recite one of the judicial exceptions (a law of nature, a natural phenomenon, or an abstract idea). Then, if the claims recite a judicial exception, determining whether the claims at issue are directed to the recited judicial exception, or whether the recited judicial exception is integrated into a practical application of that exception, i.e., that the claims “apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Revised Guidance, 84 Fed. Reg. at 54. If the claims are directed to a judicial exception, then finally determining whether the claims provide an inventive concept because the additional elements recited in the claims provide significantly more than the recited judicial exception.

STEP 2A Prong 1

At a high level, and for our preliminary analysis, we note that method claim 37 recites adding medical order entry data, setting status indicator data, presenting task data from a data query, selecting task data, and modifying status indicator data. Adding and setting data are modifying data. Presenting data is displaying data. Selecting data is rudimentary data analysis. Thus, claim 37 recites modifying, displaying, and analyzing data. None of the limitations recite technological implementation details for any

of these steps, but instead recite only results desired by any and all possible means.

From this we see that claim 37 does not recite the judicial exceptions of either natural phenomena or laws of nature.

Under Supreme Court precedent, claims directed purely to an abstract idea are patent in-eligible. As set forth in the Revised Guidance, which extracts and synthesizes key concepts identified by the courts, abstract ideas include (1) mathematical concepts⁵, (2) certain methods of organizing human activity⁶, and (3) mental processes⁷. Among those certain methods of organizing human activity listed in the Revised Guidance are managing personal behavior or relationships or interactions between people. Like those concepts, claim 37 recites the concept of managing medical treatment among medical personnel. Specifically, claim 37 recites operations that would ordinarily take place in advising one to display medical tasks needed and their status and select one to be performed. The advice to display medical tasks needed and their status and select one to be performed involves maintaining electronic access to medical tasks that are to be

⁵ See, e.g., *Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); *Mackay Radio & Telegraph Co. v. Radio Corp. of Am.*, 306 U.S. 86, 94 (1939); *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018).

⁶ See, e.g., *Bilski*, 561 U.S. at 628; *Alice*, 573 U.S. at 219-20; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1383 (Fed. Cir. 2017); *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1160–61 (Fed. Cir. 2018).

⁷ See, e.g., *Benson*, 409 U.S. at 67; *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–72 (Fed. Cir. 2011); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

performed, which is a managerial act, and selecting the task corresponding to the first medical order entry, which is an act ordinarily performed in the stream of medical management. For example, claim 37 recites “maintaining electronic access to [] medical tasks that are to be performed,” which is an activity that would take place whenever one is coordinating medical activities. Similarly, claim 37 recites “selecting, by medical staff from the listing of multiple tasks to be performed, the task corresponding to the first medical order entry,” which is also characteristic of medical management.

The Examiner determines the claims to be directed to managing the medical order entries. Final Act. 3.

The preamble to claim 37 recites that it is a method for maintaining electronic access to electronic order entries maintained on an electronic database, the electronic order entries corresponding to medical tasks that are to be performed or have been performed by medical staff on identified patients. The steps in claim 37 result in displaying medical tasks needed and their status and selecting one to be performed absent any technological mechanism other than a conventional computer for doing so.

As to the specific limitations, limitations 1–5 recite generic and conventional modifying, displaying, and analyzing of medical data, which advise one to apply generic functions to get to these results. The limitations thus recite advice for displaying medical tasks needed and their status and selecting one to be performed. To advocate displaying medical tasks needed and their status and selecting one to be performed is conceptual advice for results desired and not technological operations.

The Specification 1:1–2 describes the invention as relating to a medical records, documentation, tracking, and order entry system. Thus, all

this intrinsic evidence shows that claim 37 recites managing medical treatment among medical personnel. This is consistent with the Examiner's determination.

This in turn is an example of managing personal behavior or relationships or interactions between people as a certain method of organizing human activity because managing medical procedures among medical personnel is a form of managing interactions between people. The concept of managing medical treatment among medical personnel by displaying medical tasks needed and their status and selecting one to be performed is one idea for controlling such performance. The steps recited in claim 37 are part of how this might conceptually be premised.

Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter.

Alternately, this is an example of concepts performed in the human mind as mental processes because the steps of modifying, displaying, and analyzing data mimic human thought processes of observation, evaluation, judgment, and opinion, perhaps with paper and pencil, where the data interpretation is perceptible only in the human mind. *See 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). Claim 37, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data modification, display, and analysis and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”).

As such, claim 37 recites modifying, displaying, and analyzing data, and not a technological implementation or application of that idea.

From this we conclude that at least to this degree, claim 37 recites managing medical treatment among medical personnel by displaying medical tasks needed and their status and selecting one to be performed, which is managing personal behavior or relationships or interactions between people, one of certain methods of organizing human activity identified in the Revised Guidance, and, thus, an abstract idea.

STEP 2A Prong 2

The next issue is whether claim 37 not only recites, but is more precisely directed to this concept itself or whether it is instead directed to some technological implementation or application of, or improvement to, this concept i.e. integrated into a practical application.⁸

At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. At some level, “all inventions ... embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. “[A]pplication[s]” of such concepts “ ‘to a new and useful end,’ ” we have said, remain eligible for patent protection. Accordingly, in applying the § 101 exception, we must distinguish between patents that claim the “ ‘buildin[g] block[s]’ ” of human ingenuity and those that integrate the building blocks into something more.

Alice, 573 U.S. at 217 (citations omitted).

Taking the claim elements separately, the operation performed by the computer at each step of the process is expressed purely in terms of results,

⁸ See, e.g., *Alice*, 573 U.S. at 223, discussing *Diamond v. Diehr*, 450 U.S. 175 (1981).

devoid of implementation details. Step 1 is pure data gathering. Limitations describing the nature of the data do not alter this. Steps 2 and 5 recite basic conventional data operations such as generating, updating, and storing data. Steps 3 and 4 recite generic computer processing expressed in terms of results desired by any and all possible means and so present no more than conceptual advice. All purported inventive aspects reside in how the data is interpreted and the results desired, and not in how the process physically enforces such a data interpretation or in how the processing technologically achieves those results.

Viewed as a whole, Appellant's claim 37 simply recites the concept of managing medical treatment among medical personnel by displaying medical tasks needed and their status and selecting one to be performed as performed by a generic computer. This is no more than conceptual advice on the parameters for this concept and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

Claim 37 does not, for example, purport to improve the functioning of the computer itself. Nor does it effect an improvement in any other technology or technical field. The Specification only spells out different generic equipment⁹ and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of managing medical treatment among medical personnel by displaying medical tasks needed and their status and selecting one to be performed under different scenarios. It does not describe any particular

⁹ The Specification describes generic file and communication servers and terminals using generic CPU's. Spec 10.

improvement in the manner a computer functions. Instead, claim 37 at issue amounts to nothing significantly more than an instruction to apply managing medical treatment among medical personnel by displaying medical tasks needed and their status and selecting one to be performed using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

None of the limitations reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field, applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease or medical condition, implements a judicial exception with, or uses a judicial exception in conjunction with, a particular machine or manufacture that is integral to the claim, effects a transformation or reduction of a particular article to a different state or thing, or applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception.

We conclude that claim 37 is directed to achieving the result of managing medical treatment among medical personnel by advising one to display medical tasks needed and their status and select one to be performed, as distinguished from a technological improvement for achieving or applying that result. This amounts to managing personal behavior or relationships or interactions between people, which falls within certain methods of organizing human activity that constitute abstract ideas. The claim does not integrate the judicial exception into a practical application.

STEP 2B

The next issue is whether claim 37 provides an inventive concept because the additional elements recited in the claim provide significantly more than the recited judicial exception.

The introduction of a computer into the claims does not generally alter the analysis at *Mayo* step two.

the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if 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. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 573 U.S. at 223–24 (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea [] on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer for modifying, displaying, and analyzing data amounts to electronic data query and retrieval—one of the most basic functions of a

computer. All of these computer functions are generic, routine, conventional computer activities that are performed only for their conventional uses. *See Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). *See also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming”). None of these activities is used in some unconventional manner nor does any produce some unexpected result. Appellant does not contend it invented any of these activities. In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP America, Inc. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellant’s claim 37 add nothing that is not already present when the steps are considered separately. The sequence of data modification, display, and analysis is equally generic and conventional. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission), *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017)

(sequence of processing, routing, controlling, and monitoring). The ordering of the steps is therefore ordinary and conventional.

We conclude that claim 37 does not provide an inventive concept because the additional elements recited in the claim do not provide significantly more than the recited judicial exception.

REMAINING CLAIMS

Claim 37 is representative. The other independent method claim 49 is substantially similar at least as regards this analysis. Claim 49 differs only in reciting particular data fields, logging on a terminal, maintaining presentation format data, and displaying data whose content and arrangement is somehow determined by the presentation format data. Logging on and maintaining data are conventional data processing, and the field labels cannot confer eligibility. Displaying data based on other data is conventional programming.¹⁰ Any display content and arrangement have to be programmed somehow and the claim does not recite any particular implementation details for maintaining and displaying according to the presentation view data. Maintaining various conventional report formats was within the scope of this.

Thus, claim 49 also recites modifying, displaying, and analyzing data. Claim 49 is then directed to the judicial exception of the abstract idea of certain methods of organizing human activity as exemplified by the

¹⁰ Indeed such programming that enters and maintains data to define report content and arrangement has been so widespread, it has been referred to as report writing and report writing software was commercially available well before the filing date. See, e.g., a comparison of competing commercial report writing software in *Infoworld*, Sept. 27, 1993.
<https://books.google.com/books?id=7joEAAAAMBAJ&pg=PA89>

managing of personal behavior or relationships or interactions between people by managing medical treatment among medical personnel by advising one to display medical data in some predefined arrangement, without significantly more.

The remaining method claims merely describe process parameters. We conclude that the method claims at issue are directed to a patent-ineligible concept itself, and not to the practical application of that concept.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

Alice, 573 U.S. at 226. As a corollary, the claims are not directed to any particular machine.

LEGAL CONCLUSION

From these determinations we further determine that the claims do not recite an improvement to the functioning of the computer itself or to any other technology or technical field, a particular machine, a particular transformation, or other meaningful limitations. From this we conclude the claims are directed to the judicial exception of the abstract idea of certain methods of organizing human activity as exemplified by the managing of personal behavior or relationships or interactions between people by managing medical treatment among medical personnel by advising one to display medical tasks needed and their status and select one to be performed

(claims 37–48), and to display medical data in some predefined arrangement (claims 49–56), without significantly more.

APPELLANT’S ARGUMENTS

We are not persuaded by Appellant's argument that the “claims recite a combination of activities that define a specific way (i.e. "how") to manage medical tasks to be performed for a patient.” App. Br. 6. The way is specific only in the sense it is specified using words. All 5 actions are generic, conventional data processing actions and their sequence is equally conventional, as shown *supra*.

We are not persuaded by Appellant's argument that the “invention defines a focused solution to a medical information technology problem (i.e., reliably registering and thereafter ensuring proper completion of medical tasks for multiple patients), in the form of a detailed sequence of operations on a new type of order entry maintained in a database.” App. Br. 7. The purported focused solution is to collect the tasks to be performed and select one, and then indicate when it is done. This is no more than the electronic equivalent of a check list.

Appellant goes on to contend this is done by “linking a ‘status indicator’ element to a medical order entry (in an electronic patient database) that corresponds to a medical task to be performed on a patient. The status indicator drives the display/presentation of a medical task corresponding to the medical order entry, along with other medical tasks.” *Id.* But again, this is no more than an electronic check mark on a check list. Appellant further

contends this is done by a query. *Id.* But queries are the conventional mechanism for selecting data in a database.¹¹

We are not persuaded by Appellant's argument that claim 37 “recites particular structures (status indicators corresponding to individual ones of the medical order entries) and operations that are performed to achieve a technological improvement over previous known systems.” *Id.* Simply associating two pieces of data such as data representing a task and a status is not a technological structure, but simply a pairing of related information. Again, this is no more than pairing a check mark to a task on a check list. This does not improve technology, but at best only improves information. “The claims are focused on providing information to traders in a way that helps them process information more quickly, not on improving computers or technology.” *Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1384 (Fed. Cir. 2019).

Appellant also attempts to analogize the claims to those involved in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). App. Br. 8–9. In *McRO*, the court held that, although the processes were previously performed by humans, “the traditional process and newly claimed method . . . produced . . . results in fundamentally different ways.” *FairWarning v. Iatric Systems*, 839 F.3d 1089, 1094 (Fed. Cir. 2016) (differentiating the claims at issue from those in *McRO*). In *McRO*, “it was the incorporation of the claimed rules not the use of the computer, that improved the existing technology process,” because the

¹¹ Indeed, the most common tool for doing so, the SQL language, has a name that is an acronym for Structured *Query* Language, and one of its most common operator is the *SELECT* statement.

prior process performed by humans “was driven by subjective determinations rather than specific, limited mathematical rules.” 837 F.3d at 1314 (internal quotation marks, citation, and alterations omitted). In contrast, the claims of the instant application merely implement an old practice of using decision criteria in making task decisions in a new environment. Appellant has not argued that the claimed processes of selecting tasks apply rules of selection in a manner technologically different from those which humans used, albeit with less efficiency, before the invention was claimed. Merely pigeon holing the objects of decision making in tiers to aid decision making is both old and itself abstract.

The claims in *McRO* were not directed to an abstract idea, but instead were directed to “a specific asserted improvement in computer animation, i.e., the automatic use of rules of a particular type.” We explained that “the claimed improvement [was] allowing computers to produce ‘accurate and realistic lip synchronization and facial expressions in animated characters’ that previously could only be produced by human animators.” The claimed rules in *McRO* transformed a traditionally subjective process performed by human artists into a mathematically automated process executed on computers.

FairWarning, 839 F.3d at 1094 (citations omitted).

We are not persuaded by Appellant’s argument that the claims contain an inventive concept that is also found in the specific ordered combination of the limitations, similar to the Federal Circuit's findings in *BASCOM* (*BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)). App. Br. 9–10. Initially, we remind Appellant that *BASCOM* did not find claims eligible on the substance, but rather that the Appellees did not provide sufficient evidence to support a 12(b)(6) motion to dismiss in which facts are presumed in the non-movant’s favor.

The key fact in *BASCOM* was the presence of a structural change in “installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server.” *BASCOM*, 827 F.3d at 1350. The instant claims have no analogous structural benefit. This structural change occurred in the context of the internet as it existed at filing in March 1997 when dial up internet service was still prevalent. It was not the idea of having user customizable filtering located separately from the user that was inventive, but the manner of accomplishing it in that context, as the relatively primitive internet architecture at that time did not readily lend itself to such filtering. Filtering located separately from the user was already performed. “To overcome some of the disadvantages of installing filtering software on each local computer, another prior art system relocated the filter to a local server.” *Id.* at 1344. But it was known that allowing user customization there was desirable. “However, the one-size-fits-all filter on the local server was not ideal.” *Id.*

The *BASCOM* filter was invented prior to the now prevalent use of self identifying devices with media access control (MAC) addresses. Thus, absent that, “*BASCOM* explains that the inventive concept rests on taking advantage of the ability of at least some ISPs to identify individual accounts that communicate with the ISP server, and to associate a request for Internet content with a specific individual account.” *Id.* Thus, *BASCOM* solved the problem of how to create the structural relationship known to be desired by finding a way to relate a user to a centrally located filter at a time when how to do so was unclear. It was not the structural relation per se, but how it was accomplished that was

inventive. No analogous technological hurdle is described in the instant record. Indeed the whole point appears to be to simply use existing task data to introduce prioritization by flagging with status data.

Appellants next contend the claims are analogous to those in *AmDocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016).

Appellants contend that the claims in *Amdocs* were related to monitoring activity on computer networks, creating a record of the activity and thereafter using the data records to set prices or deploy new services. App. Br. 10. This is not quite accurate. The Court’s analysis turned heavily on a prior construction.

Claim 1 requires “computer code for using the accounting information with which the first network accounting record is correlated to enhance the first network accounting record.” In *Amdocs I*, we construed “enhance” as being dependent upon the invention’s distributed architecture. We construed “enhance” as meaning “to apply a number of field enhancements in a distributed fashion.” We took care to note how the district court explained that “[i]n this context, ‘distributed’ means that the network usage records are processed close to their sources before being transmitted to a centralized manager.” And we specifically approved of the district court’s “reading the ‘in a distributed fashion’ and the ‘close to the source’ of network information requirements into the term ‘enhance.’”

AmDocs, 841 F.3d at 1300 (citations omitted). Thus, the Court read “to apply a number of field enhancements in a distributed fashion” into “using the accounting information with which the first network accounting record is correlated to enhance the first network accounting record.” This is substantially more than merely being related to monitoring activity and creating new data.

We are not persuaded by Appellant's argument that another PTAB case had an eligibility rejection reversed. App. Br. 10–11. Other PTAB cases have different underlying facts and are not controlling.

We are not persuaded by Appellant's argument that the claims are not abstract in view of *Thales Visionix Inc. v. United States*, 850 F.3d 1343 (Fed. Cir. 2017). Reply Br. 4–5.

As the opinion in *SAP America* stated,

Similarly, in *Thales Visionix Inc. v. United States*, the improvement was in a physical tracking system. The use of mathematics to achieve an improvement no more changed the conclusion that improved physical things and actions were the subject of the claimed advance than it did in *Diamond v. Diehr*. Here, in contrast, the focus of the claims is not a physical-realm improvement but an improvement in wholly abstract ideas—the selection and mathematical analysis of information, followed by reporting or display of the results.

SAP Am., 890 F.3d at 1022 (citations omitted). As with *SAP*, the instant claims select and analyze information, and then display results.

*Claims 37–49 and 54–56 rejected under 35 U.S.C. § 103(a) as unpatentable
over Collen*

As to independent claim 37 and its dependent claims, we are persuaded by Appellant's argument that “Collen neither discloses nor suggests such a presentation of a listing of multiple medical tasks *in accordance with corresponding status indicators on individual ones of the multiple order entries* corresponding to the listed medical tasks.” Reply Br. 6.

As to independent claim 49 and its dependent claims, and independent claim 56, we are persuaded by Appellant's argument that

Collen neither discloses nor suggests Appellants' claimed presentation of a listing of patient information from MULTIPLE active patient records in accordance with a particular one of multiple presentation view definitions. Nor does Collen describe a system where the particular presentation view definition, which configures content and display arrangement of patient information from multiple active patient records, is selected "*according to a task to be performed by the user identified during the logging step.*"

Reply Br. 8.

Claim 50 rejected under 35 U.S.C. § 103(a) as unpatentable over Collen and Engleson

This claim depends from claim 49.

Claims 51–53 rejected under 35 U.S.C. § 103(a) as unpatentable over Collen and Official Notice

These claims depend from claim 49.

CONCLUSIONS OF LAW

The rejection of claims 37–48 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

The rejection of claims 37–49 and 54–56 under 35 U.S.C. § 103(a) as unpatentable over Collen is improper.

The rejection of claim 50 under 35 U.S.C. § 103(a) as unpatentable over Collen and Engleson is improper.

The rejection of claims 51–53 under 35 U.S.C. § 103(a) as unpatentable over Collen and Official Notice is improper.

CONCLUSION

The rejection of claims 37–48 is affirmed.

The rejection of claims 49–56 is reversed.

The following new ground of rejection is entered pursuant to 37 C.F.R. § 41.50(b). Claims 49–56 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

All claims (37–56) now stand rejected.

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed	New Ground
37–48	101	Eligibility	37–48		
49–56	101	Eligibility			49–56
37–49, 54–56	103	Collen		37–49, 54–56	
50	103	Collen, Engleson		50	
51–53	103	Collen, Official Notice		51–53	
Overall Outcome			37–48	49–56	49–56

Our decision is not a final agency action.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides:

When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

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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). See 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED-IN-PART; 41.50(b)