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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN GAIL JOHNSON

Appeal 2018-000262
Application 14/213,163
Technology Center 3600

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and PHILIP J. HOFFMANN, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We REVERSE.

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[1] Appellant identifies the Real Party in Interest as Careview Communications, Inc. App. Br. 2.

THE INVENTION

Appellant claims a system and method for documenting patient procedures. (Abstr., Title).

Claim 1 is representative of the subject matter on appeal.

> 1. A surveillance system for documenting patient procedures comprising:
>
> a monitoring station including at least one dedicated storage server;
>
> at least one a surveillance camera configured to capture a plurality of video frames of a surveillance area;
>
> a network interface configured to transfer said video frames to a remote location;
>
> a patient procedure remote sensor configured to detect a presence of a health care professional proximate to the surveillance area to perform a patient procedure and output a signal indicative of the detection; and
>
> a control system comprising memory and at least one processing unit, the control system configured to:
>
> receive the signal indicating the presence of the healthcare professional proximate to the surveillance area from the patient procedure remote sensor;
>
> create a data event file in response to the detection of the presence of a health care professional, wherein creating the data event file comprising creating at least one header associated with the data event file;
>
> receive the plurality of video frames from the surveillance camera;
>
> save the plurality of video frames in the memory;
>
> based on the reception of the signal indicating the presence, prioritize a first set of video frames of the plurality of video frames that show the presence of the healthcare professional proximate to the surveillance area relative to a second set of video frames of the plurality of video frames, wherein the second set of video frames show routine surveillance of the surveillance area before the indication is received, and

wherein the prioritization protects the first set of video frames from overwriting in the memory while allowing the second set to be overwritten;

write the first set of video frames to the data event file;

receive an indication from the patient procedure remote indicating the end of a medical procedure;

determine the accessibility of a network using the network interface;

transfer the at least one header contained within the data event file to the monitoring station using the network interface if the network is accessible;

transfer the plurality video frames from the control system to the monitoring station;

detect a bottleneck condition using the network interface; and

in response to a bottleneck condition, transmit only those video frames written to the data event file to the monitoring station.

THE REJECTION

Claims 1–20 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ANALYSIS

35 U.S.C. § 101 REJECTION

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

Alice Corp. Pty. v. CLS Bank Int'l, 573 U.S., 217–18 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)) (citations omitted).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Federal Circuit has explained that "the 'directed to' inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether 'their character as a whole is directed to excluded subject matter.'" *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an "abstract idea" for which computers are invoked merely as a tool. *See id.* at 1335–36.

In so doing we apply a "directed to" two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the judicial exception is integrated into a practical application. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 50–57 (Jan. 7, 2019).

The Examiner determines that the claims are directed to documenting patient medical procedures related to patient audio and video surveillance to allow healthcare facilities to automatically document a medical procedure. (Final Act. 2). The Examiner finds that the claims recite additional

limitations of software using a camera control device, processor unit, RAM and ROM memory, network controller, monitor device, video processor and remote interface. The Examiner finds that these components are recited at a high level of generality and perform generic computer functions routinely used in computer applications utilizing generic computer elements performing generic and well-known computer functions. (Final Act. 3). The Examiner finds that these elements do no more than implement the abstract idea with a computerized system. (Final Act. 3).

The Examiner does not address the recitation of a patient procedure remote sensor configured to detect a presence of a health care professional proximate to the surveillance area to perform a patient procedure and output a signal indicative of the detection. The Examiner also does not discuss the recitation of a control system configured to detect a bottleneck condition.

We will not sustain this rejection because even if the Examiner is correct that the claims are directed to an abstract idea and even if the features of the claims specifically discussed by the Examiner do not amount to significantly more than the abstract idea, the Examiner has not adequately explained why the recitation of a "remote sensor configured to detect a presence of a health care professional proximate to the surveillance area . . . and output a signal indicative of the detection" is not a recitation of significantly more than the abstract idea.

In addition, the Examiner has not explained why the step of detecting a bottleneck is not a recitation of significantly more than an abstract idea.

We agree with Appellant that the Examiner failed to provide a required explanation of why the elements either individually or in combination with the additional elements of the claim, such as those mentioned above, does not amount to significantly more. (App. Br. 9–10).

Here, the Examiner did not satisfy the initial burden of establishing a prima facie case of ineligibility under § 101 by providing an explanation as to how the recitations in the claims in addition to any abstract idea do not amount to significantly more than the abstract idea. *See* MPEP) § 2106.07 (9th ed. Rev. 08.2017, Jan. 2018) (noting that the initial burden of establishing a prima facie case of ineligibility under § 101 is on the Examiner to explain clearly and specifically why claims are ineligible, so that the applicant has sufficient notice and can respond effectively); *Rapid Litig. Mgmt, Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1051 (Fed, Cir. 2016).

Accordingly, for the reasons discussed above, we reverse the Examiner's patent eligibility rejection of claim 1 under § 101. We also reverse the rejection as it is directed to the remaining claims subject to this rejection because the remaining claims require similar subject matter.

CONCLUSIONS OF LAW

We conclude the Examiner did err in rejecting claims 1–20 under 35 U.S.C. § 101.

DECISION

The decision of the Examiner is reversed.

REVERSED