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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* STEPHEN TREY MOORE, THOMAS SCOTT WADE, and  
LLOYD KORY BROWN

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Appeal 2018-000537  
Application 13/798,661  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, MICHAEL C. ASTORINO, and  
BRUCE T. WIEDER, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the  
Examiner's final rejection of claims 1–16. We have jurisdiction under 35  
U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant claims displaying patient data and/or information on mobile  
devices. (Spec. ¶ 2, Title).

Claim 1 is representative of the subject matter on appeal.

1. A computer-implemented method for providing a user of a mobile device access to patient information and patient physiological data, the method being executed using one or more processors and comprising:

receiving, by the one or more processors, user input, the user input indicating a user command to display a waveform strip screen;

in response to the user input, processing, by the one or more processors, patient-specific data to provide waveform data; and

displaying the waveform strip screen on the mobile device, the waveform strip screen displaying one or more waveform strips, each waveform strip of the one or more waveform strips being based on the waveform data, graphically mimicking a real-world, physical waveform strip that is standardly used by healthcare providers and comprising a plurality of strip segments that appear to be folded, such that at least one of the plurality of strip segments is fully displayed and another one of the plurality of strip segments is partially displayed.

#### THE REJECTION

1. Claims 1–16 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.
2. Claims 1–12 and 15–16 are rejected under 35 U.S.C. § 103(a) as unpatentable over Powell et al. (hereinafter “Powell”) (US 2010/0235782 A1; Sept. 16, 2010), Webb (US 2002/0154111 A1; Oct. 24, 2002), Kaneko et al. (hereinafter “Kaneko”) (US 4,896,677; Jan. 30, 1990) and further in view of O’Leary et al. (hereinafter “O’Leary”) (US 7,171,630 B2; Jan. 30, 2007).

3. Claims 13 and 14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Powell, Webb, Kaneko, O’Leary, and Bryant et al. (hereinafter “Bryant”) (US 2012/0206475 A1; Aug. 16, 2012).

## ANALYSIS

### 35 U.S.C. § 101 REJECTION

We will sustain the rejection of claims 1–16 under 35 U.S.C. § 101.

#### 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. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 217-218 (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.’” *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet*

Appeal 2018-000537  
Application 13/798,661

*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). “A claim that integrates a judicial exception into a practical application will 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.” *Id.* at 54.

The Examiner determines that the claims are directed to providing a user of a mobile device access to patient information and patient physiological data. (Final Act. 2). The Examiner determines that the claims are directed to “receiving user input indicating a user command to display a waveform strip screen, processing patent-specific data to provide waveform data and displaying the waveform strips” which the Examiner determines is an abstract idea because it uses categories to organize, store and transmit information. The Examiner finds that the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception. (*Id.* at 3).

The Specification states that implementations of the present disclosure provide methods for providing a user of a mobile device access to patient information and patient physiological data. The Specification also states:

methods include actions of receiving user input, the user input indicating a user command to display a waveform strip screen, in response to the user input, processing patient-specific data to provide waveform data, and displaying the waveform strip screen on the mobile device, the waveform strip screen displaying one or more waveform strips, each waveform strip of the one or more waveform strips being based on the waveform data and graphically depicting a physical waveform strip.

Spec. ¶ 4.

As such, the Specification supports the Examiner's determination that the claims are directed to providing a user of a mobile device access to patient information and patient physiological data and using categories to organize, store, and transmit information.

Consistent with the disclosure in the Specification, claim 1 recites "receiving . . . user input," "processing . . . patient-specific data," and "displaying . . . on the mobile device."

We thus agree with the Examiner's findings that the claims are directed to providing a user of a mobile device access to patient information. As such, the steps of claim 1, for example, constitute "analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (claims directed to certain arrangements involving contractual relations are directed to abstract ideas). Thus, we find that the claims recite an abstract idea of a mental process. *Guidance* 84 Fed. Reg. at 52.

Turning to the second prong of the “directed to test”, claim 1 requires a “mobile device,” and “one or more processors.” The recitation of these words does not impose “a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *Id.* We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in independent claim 1 invoke any inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes any improvement in computer technology and/or functionality to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a “practical application,” as that phrase is used in the revised Guidance. *See Guidance*, 84 Fed. Reg. at 54–55.

In this regard, the recitation does not affect an improvement in the functioning of a computer or other technology, does not recite a particular machine or manufacture that is integral to the claims, and does not transform or reduce a particular article to a different state or thing. *Id.* Thus, claim 1

Appeal 2018-000537  
Application 13/798,661

is directed to a judicial exception that is not integrated into a practical application and thus is directed to an “abstract idea.”

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to an abstract idea, the claims must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements that is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217-18 (alteration in original) (quoting *Mayo Collaborative Servs.*, 566 U.S. at 72–73).

The introduction of a computer (processors and mobile device) into the claims does not alter the analysis at *Alice* step two.

[T]he 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.”

*Id.* at 223 (alterations in original) (citations omitted).

Instead, “the relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Id.* 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 to receive, process, and display data amounts to electronic data processing and display—some of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp.*, 830 F.3d at 1354; *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”). 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 Am. Inc. v. InvestPic, LLC*, 890 F.3d 1016, 1022 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellant’s claims add nothing that is not already present when the steps are considered separately. In this regard, claim 1, for example recites “receiving by the one or more processors, user input,” “processing . . . by one or more processors . . . data,” and “displaying the waveform strip screen on the mobile device.” The steps of receiving data, processing data and displaying data are well-understood, and conventional steps performed by any generic computer. The sequence of data reception-analysis-access/display is equally generic and conventional or otherwise held to be abstract. *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

Appeal 2018-000537  
Application 13/798,661

receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

Claim 1 does not, for example, purport to improve the functioning of the processors or mobile device. As we stated above, claim 1 does not affect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios. (*See, e.g.*, Spec. ¶¶ 6, 22, 23, 118, 120). Thus, claim 1 amounts to nothing significantly more than instructions to apply the abstract idea of information access using some unspecified, generic processor. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 226.

We have reviewed all the arguments (Appeal Br. 14–17) Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the claimed subject matter is rooted in computer technology in order to overcome a problem specifically arising in the realm

Appeal 2018-000537  
Application 13/798,661

of computer networks and is therefore not abstract. Appellant argues that the subject matter of the claims addresses issues resulting from displaying traditionally physical media on devices as well as the disparate nature of data from medical devices, electronic medical records and patient monitors. In support of this argument, Appellant argues that the claims are like the claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014).

We are not persuaded by Appellant's argument that the claim is analogous to that in *DDR Holdings*, where the Court noted that a claim may amount to more than any abstract idea recited in the claims when it addresses a business challenge, such as "retaining website visitors," where that challenge is particular to a specific technological environment, such as the Internet.

In *DDR*, the court stated that "the [] patent's claims address the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host's website after 'clicking' on an advertisement and activating a hyperlink." *DDR Holdings*, 773 F.3d at 1257. This was done in the claim by serving a composite page with content based on the link that was activated to serve the page.

We agree with the Examiner that the problem addressed by the claimed subject matter is providing doctors with a waveform strip that appears like a real world waveform that appears to fold on a mobile device. (Ans. 5). That this is done using one or more processors and a mobile device is not pertinent to determining whether the claim itself provides a technical solution to a technical problem. There is no technical problem solved by the claimed invention. Rather the processors and mobile device

Appeal 2018-000537  
Application 13/798,661

exchange data and the mobile device displays the data in a well-understood and conventional manner. And, unlike the situation in *DDR Holdings*, we find no indication in the record, nor do Appellants point us to any indication, that the mobile device and processors are used other than in their normal, expected, and routine manner, e.g., for receiving and transmitting information.

We do not agree with Appellant that the Examiner failed “to address any additional elements both individually and as a combination, much less why such fail to amount to significantly more than a judicial exception by meaningfully limiting the judicial exception.” (Appeal Br. 16). The Examiner clearly addressed the recitation of one or more processors on page 4 of the Final Action stating that the recitation is a recitation of generic computer components recited as performing generic computer functions and amounts to no more than implementing the abstract idea with a computerized system.

In view of the foregoing, we will sustain the Examiner’s rejection of claim 1. We will also sustain this rejection as it is directed to the remaining claims because the Appellant does not argue the separate eligibility of these claims.

#### REJECTIONS UNDER 35 U.S.C. §103(a)

We will not sustain the rejections of the appealed claims under 35 U.S.C. §103(a) because we agree with Appellant that the prior art does not disclose “graphically mimicking a real-world, physical waveform strip that is graphically depicted in a standard medical format.” (Appeal Br. 19). In both rejections under 35 U.S.C. §103(a), the Examiner relies on paragraph 15 of Webb for teaching this subject matter. (Final Act. 7). Specifically, the Examiner relies on the disclosure in paragraph 15 that animation capabilities

allow waveform data to be scrolled across the screen to provide a “real-time” effect. There is no disclosure in paragraph 15 of Webb that the waveform graphically mimicks a real-world physical waveform. Contrary to the findings of the Examiner, there is no evidence that the “real-time” display in Webb mimics a “real-world” display.

In view of the foregoing, we will not sustain the rejection of claim 1 and claims 2–12 dependent thereon. We will also not sustain the rejection as it is directed to claims 15 and 16 because these claims require the same subject matter we found lacking in Webb. We will also not sustain the 35 U.S.C. §103(a) rejection of claims 13 and 14 for the same reason.

#### CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1–16 under 35 U.S.C. § 101 and did err in rejecting claims 1–16 under 35 U.S.C. § 103(a).

#### DECISION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–16	101	Eligibility	1–16	
1–12, 15, 16	103	Powell, Webb, Kaneko, O’Leary		1–12, 15, 16
13, 14	103	Powell, Webb, Kaneko, O’Leary, Bryant		13, 14
<b>Overall Outcome</b>			1–16	

Appeal 2018-000537  
Application 13/798,661

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).

AFFIRMED