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EXAMINER

LUBIN, VALERIE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ROBERT H. LORSCH<sup>1</sup>

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Appeal 2018–000742  
Application 13/856,732  
Technology Center 3600

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Before BIBHU R. MOHANTY, KENNETH G. SCHOPFER, and  
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1–17 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

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<sup>1</sup> Appellant identifies the real party in interest as MyMedicalRecords, Inc., a subsidiary of MMRGlobal, Inc. (App. Br. 4).

## THE INVENTION

The Appellant’s claimed invention is directed to a method for consumers to request and store their medical records from healthcare providers (Spec., page 1, lines 17–20). Claim 1, reproduced below with the numbering in brackets added, is representative of the subject matter on appeal.

1. A method identifying a patient associated with a health record within a personal health record system using a destination address, the method comprising:

[1] creating, by the personal health record system, a personal health record user account on a computer readable storage medium within the personal health record system and accessible to the patient via web;

[2] electronically receiving a health record of the patient sent from outside of the personal health record system without a health care provider logging into the system, the health record directed to the destination address and the health record received at a computer associated with the destination address;

[3] storing the health record in a computer readable storage medium within the personal health record system;

[4] using the destination address to determine a user account of the patient associated with the health record on the personal health record system, the destination address serving as a unique identifier for the patient, wherein the step of using the destination to determine the user account of the patient associated with the health record is performed by a computer; and

[5] providing access to the health record to the patient through use of access information to log-in to the user account on the personal health record system;

[6] wherein an alert is provided to the patient in response to the electronic reception of the health record.

## THE REJECTIONS

The following rejections are before us for review:

1. Claims 1–17 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
2. Claims 1–17 are rejected under 35 U.S.C. § 112, first paragraph, as failing to show possession of the claimed invention.
3. Claims 1–17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Segal (US 2001/0041991 A1, published Nov. 15, 2001) in view of Malik (US 2001/0037219 A1, published Nov. 1, 2001).

## FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence<sup>2</sup>.

## ANALYSIS

### *Rejection under 35 U.S.C. § 101*

The Appellant argues that the rejection of claim 1 is improper because the claim is not directed to an abstract idea and additionally provides “significantly more” than any alleged abstract idea (App. Br. 12–18, Reply Br. 12–22).

In contrast, the Examiner has determined that rejection of record is proper (Final Act. 2–3; Ans. 2–3).

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<sup>2</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

We agree with the Examiner. Under 35 U.S.C. § 101, 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 an implicit exception: “laws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In judging whether claim 1 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.*, 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. If so, we then consider the elements of the 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 of the abstract idea. *Id.* 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.* The Court also stated that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention”. *Id.* at 2358.

Here, we determine that the claim is directed to the concept of creating, storing, and using a health record system for a patient. This is a method of organizing human activities and is an abstract idea beyond the scope of § 101. *See Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) where collecting information, analyzing it, and

displaying results from certain results of the collection and analysis was held to be an abstract idea.

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not. The Specification at pages 14 and 17 for example describes using common computer components such as a web server, a fax/voice server, and a web site in a conventional manner for their known functions.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function. Thus, we disagree with Appellant’s argument that the claims amount to significantly more than the abstract idea under *Alice* step two. *See* App. Br. 13–14; *see also* Reply Br. 13–15.

For these above reasons the rejection of claim 1 is sustained. The Appellant has provided the same or similar arguments for the remaining claims which are drawn to similar subject matter and the rejection of these claims is sustained as well.

*Rejection under 35 U.S.C. § 112 (first paragraph)*

The Examiner has determined independent claims 1, 7, and 13 recite “electronically receiving a health record...without a health care provider logging into the system” (Final Act. 3, 4, Ans. 19, 20).

In contrast, the Appellant argues that the Specification provides support for this claim limitation at Figure 1, page 14, lines 1–9 and 22–25 (App. Br. 19).

We agree with the Appellant. Here the citation to the Specification at page 14 lines 1–9 and 22–25 provides support for the cited claim limitation by disclosing that the patient can use the computing device 109 to interact with the web server 108 and that a personal health record can be faxed in to the system. Accordingly, this rejection is not sustained.

*Rejection under 35 U.S.C. § 103(a)*

The Appellant argues that the rejection of claim 1 is improper because the claim does not disclose claim limitations [2] and [4] identified in the claim above (App. Br. 21–26).

In contrast, the Examiner has determined that the cited claim limitations are disclosed by Segal at paras. 21, 23, 106, 118, (Final Act. 4, Ans. 5-7).

We agree with the Appellant. Claim limitations [2] and [4] require:

[2] electronically receiving a health record of the patient sent from outside of the personal health record system without a health care provider logging into the system, the health record directed to the destination address and the health record received at a computer associated with the destination address;

[4] using the destination address to determine a user account of the patient associated with the health record on the personal health record system, the destination address serving as a unique identifier for the patient, wherein the step of using the destination to determine the user account of the patient associated with the health record is performed by a computer.

(Claim 1). Here the above claim limitations require in part “electronically receiving a health record of the patient sent from outside of the personal health record system without a health care provider logging into the system” and the above citations to Segal fail to specifically disclose this. Segal for instance at paragraph 106 discloses a physician using an access code which serves as “logging into the system” in some manner. Thus, the cited evidence indicates that a physician gains access to the patient’s records by logging in and the Examiner does not explain how Segal discloses that health records may be received or sent outside of the personal health record system without a physician accessing the records. Accordingly, the rejection of claim 1 and its dependent claims is not sustained. The remaining claims contain a similar limitation and the rejection of these claims is not sustained as well.

#### CONCLUSIONS OF LAW

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1–17 under 35 U.S.C. § 101.

We conclude that Appellant has shown that the Examiner erred in rejecting claims 1–17 under 35 U.S.C. § 112, first paragraph, and 35 U.S.C. § 103(a) as listed in the Rejections section above.



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DECISION

The Examiner’s rejection of claims 1–17 is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED