



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/580,626	12/23/2014	Robert H. Lorsch	MMR - P019	3491
133690	7590	10/23/2018	EXAMINER	
Goodhue, Coleman & Owens, P.C. 12951 University Ave Suite 201 Clive, IA 50325			LUBIN, VALERIE	
			ART UNIT	PAPER NUMBER
			3626	
			NOTIFICATION DATE	DELIVERY MODE
			10/23/2018	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@goodhue.com
eofficeaction@apcoll.com
USPTO@dockettrak.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT H. LORSCH¹

Appeal 2018-001600
Application 14/580,626
Technology Center 3600

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 1-5, 7-10, and 12-18, 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.

¹ Appellant identifies the real party in interest as MyMedicalRecords, Inc., a subsidiary of MMRGlobal, Inc. (Appeal Br. 4).

THE INVENTION

The Appellant's claimed invention is directed to a method for consumers to store and request their medical records from healthcare providers (Spec., page 1, lines 18-21). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method for providing a patient with the ability to access and collect health image records associated with the patient in a secure and private manner, the method comprising:
 - associating an ip address used by the patient with an ip address previously associated with the patient;
 - associating access information with the patient for the patient to use to access a server storing the health image records associated with the patient in a computer readable storage medium;
 - electronically receiving at the server a health image record comprising at least one of a lab report, a prescription, an x-ray, a patient chart, a test result, a medical image or a dental record associated with the patient from a health care provider associated with the patient, wherein the health image record comprises health data of the patient;
 - associating the health image record with the patient;
 - storing the health image record in the computer readable storage medium;
 - sending the health image record to a web-enabled device; and
 - providing a user interface on the web-enabled device to a patient, wherein the user interface on the web-enabled device is configured to (a) collect and display prescriptions associated with the patient, (b) collect and display health care providers associated with the patient, (c) collect and display medical conditions associated with the patient, (d) collect and display health insurance information associated with patient, (e) alert the patient that the health image record associated with the patient was received, (f) organize health records stored in the computer readable storage medium into a plurality of folders as specified by the patient through the user interface, (g) provide for sending an outgoing fax, and (h) assign a second password to at least one folder of the plurality of folders.

THE REJECTIONS

The following rejections are before us for review:

1. Claims 1–5, 7–10, and 12–18 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
2. Claims 10 and 12–14 are rejected under 35 U.S.C. § 112, first paragraph, as failing to show possession of the invention.
3. Claims 1–5, 7–9, and 15–17 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.
4. Claims 1–5, 7–9, 15, and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Segal (US 2001/0041991 A1, published Nov. 15, 2001), Gmelin (US 2005/0216311 A1, published Sep. 29, 2005), Ouye (US 2003/0154381 A1, published Aug. 14, 2003), and Hirano (US 2005/0159984 A1, published Jul. 21, 2005).
5. Claims 10, 12–14, 16, and 17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Segal, Gmelin, Ouye, Hirano, and Angst (US 2004/0186746 A1, published Sep. 23, 2004).

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 evidence².

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

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 (Appeal Br. 16-19, Reply Br. 16-20).

In contrast, the Examiner has determined that rejection of record is proper (Final Act. 2-4, Ans. 3-5).

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 accessing and collecting health image records. 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. See also *In re TL Communications LLC Patent Litigation*, 823 F.3d 607, 613 (Fed. Cir. 2016) where classifying and storing digital images in an organized manner was held to be directed to 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 for example at pages 13 and 14 describes using generic servers and computing devices 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.

For these above reasons the rejection of claim 1 is sustained. The Appellant has provided the same or similar arguments for the remaining

Appeal 2018-001600
Application 14/580,626

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, 12, and 20 recite “a web-enabled user interface for sending an outgoing fax” and that the Specification fails to provide support for this (Final Act. 4).

In contrast, the Appellant argues that the Specification provides support at page 19, lines 8-10, and page 23 line 31 through page 24, line 4 (Appeal Br. 27, 28).

We agree with the Appellant. Here, the above cited portions of the Specification provide support for the cited claim limitation and this rejection of record is not sustained.

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

The Examiner has determined that the phrases “provide for sending an outgoing fax” and “provide the sending of an outgoing fax” is unclear (Final Rej. 5, Ans.5, 6).

In contrast, the Appellant argues that this rejection is improper (Appeal Br. 28, 29).

We agree with the Appellant. Here, the above cited claim limitations are simply not indefinite in the scope of the claim and this rejection is not sustained.

Rejection under 35 U.S.C. § 103(a)

The Appellant first argues that the rejection of claim 1 is improper because the claim does not disclose or suggest the claim limitation for “alert[ing] the patient that the health image record associated with the patient was received” (Appeal Br. 30, 31, Reply Br. 34-38).

In contrast, the Examiner has determined that the cited claim limitation would have been obvious in view of Segal at para. 104 and one of ordinary skill in the art knowing the advantage of sending communications and emails to patients to inform them of relevant events such as when a new document arrives in their accounts (Final Act. 5-8, Ans. 6).

We agree with the Examiner’s rejection of record that the cited claim limitation would have been obvious in the cited combination. Here, in the cited combination it would have been obvious to one of ordinary skill in the art to alert a patient when their health record was received to keep them updated. In *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007) the Court stated that when considering obviousness that “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR* at 418. We agree with the Examiner that one of ordinary skill in the art would have seen the advantage in making the above modification.

The Appellant secondly argues that the rejection of claim 1 is improper because the prior art does not teach “a user interface configured to provide for sending an outgoing fax” (Appeal Br. 31-35, Reply Br. 38-42).

In contrast, the Examiner has determined that the argued claim limitation is suggested by Gmelin at paras 18, 24, and 34 and Segal (Ans. 7, 8).

We agree with the Examiner's findings and rationale. Here, Gmelin at paras. 24 and 34 shows the use of a fax device, and the use of it to transmit information would have been obvious as a conventional method of transmitting information effectively. Accordingly, this rejection of claim 1 is sustained.

The Appellant argues thirdly that the rejection of claim 3 is improper because Segal does not teach "a destination address for a health image record that is a phone number or an e-mail address" (Appeal Br. 35, 36, Reply Br. 42-44).

In contrast, the Examiner has determined that this is suggested by Segal at paras. 106, 118, and 140 (Ans. 8, 9).

We agree with the Examiner. Segal at para. 140 discloses that a user can make requests for health images by email. Email and telephone numbers are used in a wide variety of arts for effective data transmission. The use of conventional email to send the images would have been an obvious and readily inferred modification to one of ordinary skill in the art for a low cost and effective transmission of the data. Email and telephone numbers are used in a wide variety of arts for effective data transmission. Accordingly, this rejection of claim 3 is sustained.

The Appellant argues that the rejection of claim 15 is improper because the cited prior art fails to disclose or teach "alerting the patient that a health image record associated with the patient was received" and "a user

interface on a web enabled device configured to provide for the sending of an outgoing fax” (Appeal Br. 36-41, Reply Br. 44-52).

In contrast, the Examiner has determined that the cited claim limitations are suggested in the combination by Gmelin at paras. 24 and 34 (6-8).

We agree with the Examiner. As noted above, Gmelin at paras. 24 and 34 shows the use of a fax device. Also as noted above, we agree with the Examiner that one of ordinary skill in the art would have known the advantages of sending communications and emails to patients to inform them of relevant events such as when a new document arrives in their accounts and that such a modification would have been obvious. Accordingly, this rejection of claim 15 is sustained.

The Appellant argues that the rejection of claim 18 is improper because the cited prior art fails to disclose or teach “a user interface configured on a web-enabled computing device to provide communications management features for managing with health care providers” and “a user interface on a web-enabled computing device configured for sending an outgoing fax” (Appeal Br. 41-46, Reply Br. 52-60).

In contrast, the Examiner has determined that the rejection of record is proper and suggested by Segal at Fig. 5i and paras. 21, 106, and 113 (Ans. 9, 10).

We agree with the Examiner. As noted above, Gmelin at paras. 24 and 34 shows the use of a fax device. Segal at para. 106 discloses that the patient controls access to their medical records using passwords and codes. Segal at para. 106 also discloses a physician is granted permission to view or update their health record. Segal at para. 104 discloses that the system can

be used on the Internet via a computer workstation. Thus, the controlling of access to the health records on the computer serves as the argued “communication management feature” for health care providers chosen to be able to access the patient’s records. Regardless, the use of such a feature to manage communication preferences would have been an obvious modification to one of ordinary skill in the art for a central communication control location. For these reasons the rejection of claim 18 is sustained.

The Appellant has argued at page 46 of the Appeal Brief that the rejection of claims 10, 12, 16, and 17 lacks a suitable rationale to support a finding of obviousness, but provides no specific arguments in this regard and this argument is not deemed persuasive.

The Appellant has provided the same or similar arguments for the remaining claims and the rejection of these claims is sustained for the same reasons given above.

CONCLUSIONS OF LAW

We conclude that the Appellant has not shown that the Examiner erred in rejecting claims 1–5, 7–10, and 12–18 under 35 U.S.C. § 101.

We conclude that the Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 112, first paragraph, and 35 U.S.C. § 112, second paragraph as listed in the Rejections section above.

We conclude that the Appellant has not shown that the Examiner erred in rejecting claims 1–5, 7–10, and 12–18 under 35 U.S.C. § 103(a) as listed in the Rejections section above.

Appeal 2018-001600
Application 14/580,626

DECISION

The Examiner's rejection of claims 1–5, 7–10, and 12–18 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