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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD VDOVJAK and ANCA IOANA DANIELA BUCUR

Appeal 2018-001893
Application 13/132,951¹
Technology Center 3600

Before HUBERT C. LORIN, BART A. GERSTENBLITH, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner’s final rejection of claims 4, 6, 8–14, and 27–37. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Appellants’ invention relates to “[a] method . . . for using assertions to reconcile records.” (Spec., Abstract.)

¹ According to Appellants, the real party in interest is Koninklijke Philips N. V. (Appeal Br. 1.)

Claims 9, 27, and 33 are the independent claims on appeal. Claim 9 is illustrative. It recites:²

9. A method of reconciling customer records between a plurality of sites comprising:

assigning a unique record number to a customer record with one or more processors;

with the one or more processors, retrieving demographic information for a customer record to match said demographic information against demographic information in a collection of records in other systems to find records that belong to the same customer stored in a database;

comparing the customer record demographic information with at least one other record demographic information in the collection of records in at least one other system to derive a likelihood ratio for each compared record with the one or more processors;

comparing each likelihood ratio to a defined accept threshold and to a defined reject threshold with the one or more processors, the comparing including:

rejecting the compared customer records if the likelihood ratio falls below a reject threshold ratio,

accepting the compared customer records if the likelihood ratio falls above an accept threshold ratio, and

identifying the customer records for a manual review if the likelihood ratio falls between the accept threshold and the reject threshold;

attaching an assertion for the compared customer records based on at least one likelihood ratio comparison with the one or more processors;

with the one or more processors, placing the customer records to be manually reviewed on an exceptions list and distributing the exception list electronically to the plurality of sites;

² Claim 9, as listed in the Appeal Brief (Appeal Br. 30–32), differs in format from claim 9 as shown in Appellants' February 22, 2017 Response that was entered by the Examiner on May 12, 2017. The latter, entered by the Examiner, appears here.

recording a determination of an accept or reject results made by manual review at each relevant site;

at least one of:

making a positive assertion in response to a recorded accept result, the positive assertion asserting that the two compared records are related to the same customer, or

making a negative assertion in response to a recorded reject result, the negative assertion asserting that the two compared records are not related to the same customer; and

wherein the step of making the acceptance or rejection assertion is performed at a plurality of user sites and further including:

notifying the user sites when two sites make conflicting assertions about a common record.

REJECTION

Claims 4, 6, 8–14, and 27–37 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ANALYSIS

Claims 6, 9, 11, 13, 14, 27, 29, 32, 33, and 37

“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. Section 101, however, “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

Alice applies a two-step framework, earlier set out in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217.

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* at 218. If the claims are determined to be directed to a patent-ineligible concept, e.g., an abstract idea, then the second step of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 221 (citing *Mayo*, 566 U.S. at 72–73, 79).

With regard to step one of the *Alice* framework, we apply a “directed to” two prong test to: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] 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.” *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 54 (Jan. 7, 2019) (hereinafter “2019 Guidance”).

Here, the Examiner determines that claim 9 is directed to “an idea of itself,” i.e., an abstract idea similar to “comparing new and stored information and using rules to identify options.” (Final Action 7.) The Examiner also determines that the claim is “similar to the abstract idea of collecting and comparing known information.” (*Id.* at 8.) The Examiner also determines that “determining whether two records correspond to the

same patient is a task which has traditionally been performed mentally. (*Id.* at 3.)

Appellants disagree and argue “that the present claims do no[t] claim an end result, but rather claim only a limited and specific apparatus or method for achieving the end result, hence are not directed to an abstract idea.” (Appeal Br. 11.)

Under step one of the *Alice* framework, we “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)).

The “directed to” inquiry . . . cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon Rather, the “directed to” inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether “their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016). In other words, the first step of the *Alice* framework “asks whether the focus of the claims is on the specific asserted improvement in [the relevant technology] or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Id.* at 1335–36; *see also* 2019 Guidance at 54–55.

The Specification provides evidence as to what the claimed invention is directed. In this case, the Specification discloses that the invention relates to “[a] method . . . for using assertions to reconcile records.” (Spec.,

Abstract.) Claim 9 provides further evidence. Claim 9 recites “[a] method of reconciling customer records between a plurality of sites comprising: assigning a unique record number to a customer record,” “retrieving demographic information for a customer record,” “comparing the customer record demographic information with at least one other record demographic information in the collection of records . . . to derive a likelihood ratio,” “comparing each likelihood ratio to a defined accept threshold and to a defined reject threshold,” “attaching an assertion for the compared customer records,” “placing the customer records to be manually reviewed on an exceptions list and distributing the exception[s] list,” “recording a determination of an accept or reject results made by manual review,” and “notifying the user sites when two sites make conflicting assertions about a common record.” In other words, claim 9 is directed to the abstract idea of mental processes, i.e., observing and evaluating information, making judgments based on those observations and evaluations, and providing results. This is accomplished by comparing stored information, using rules to identify options, and providing the results. *See, e.g., In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (“[T]he recited physical components merely provide a generic environment in which to carry out the abstract idea of classifying and storing [information] in an organized manner.”), *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“[T]he claims of the asserted patents are drawn to the abstract idea of 1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory.”); *see also* 2019 Guidance at 52. This is

performed by using generic processors and manual review. (*See* Spec. p. 10, ll. 29–30.)

Although we and the Examiner describe, at different levels of abstraction, to what the claims are directed, it is recognized that “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). That need not and, in this case does not, “impact the patentability analysis.” *See id.* at 1241.

Appellants do not argue that they invented processors or databases. Nor do we see how the recitation of generic processors and a database, even in conjunction with the recited functions, “ensure[s] ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Alice*, 573 U.S. at 221 (brackets in original) (quoting *Mayo*, 566 U.S. at 77.) Moreover, the limitations of claim 9 do not recite implementation details. Rather, “the recited physical components merely provide a generic environment in which to carry out the abstract idea.” *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d at 611.

“[W]e have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.” *Elec. Power Grp.*, 830 F.3d at 1353. “In a similar vein, we have treated 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.” *Id.* at 1354. Additionally, the Federal Circuit has “recognized that merely presenting the results of abstract processes of collecting and analyzing information, without

more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.” *Id.*

Regardless, Appellants seek to analogize claim 9 to “example 36, claim 2 of the PTO’s December 15, 2016 example claim set.” (Appeal Br. 12.) Specifically, Appellants argue that

[a]nalogously to the PTO’s example claim, the claims of the present application solve problems arising in a specific technical area. Specifically, the claims solve problems arising in the realm of patient record technology, and, in particular to data continuity of a patient record. Particularly, the claims solve the problem of how to reconcile patient records from multiple, geographically spaced sites.

(Appeal Br. 13.) We do not find this argument persuasive. Claim 2 of Example 36 recites “[a] system for managing an inventory record” and “a high-resolution video camera array, each video camera positioned at pre-determined locations with overlapping views, for acquiring at least one high-resolution image sequence of each item of inventory.” (Subject Matter Eligibility Example: Business Methods (December 2016) (available at <https://www.uspto.gov/sites/default/files/documents/ieg-bus-meth-exs-dec2016.pdf>) at 13 (hereinafter “2016 Examples”).) Similarly, claim 1 of Example 36 recites “[a] system for managing an inventory record,” but does not recite the video camera array. Claim 1 is described as directed to patent-ineligible subject matter. (*Id.* at 14–15.) With regard to claim 2, the 2016 Examples explain that

the memory and processor in combination with a high-resolution video camera array with predetermined overlapping views that reconstructs the 3-D coordinates of the item of inventory using overlapping images of the item and prior knowledge of the location and field of view of the camera(s) provides significantly

more than the abstract idea of using data collection techniques to manage inventory.

(*Id.* at 16.) Appellants do not persuasively argue why Appellants’ claim 9 is analogous to claim 2, but not claim 1, in Example 36. Additionally, we note that “[e]ligibility-related guidance issued prior to the Ninth Edition, R–08.2017, of the MPEP (published Jan. 2018) should not be relied upon.” (2019 Guidance at 51.)

Appellants also seek to analogize claim 9 to the claims in *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016), *Enfish LLC*, 822 F.3d 1327, and *Diamond v. Diehr*, 450 U.S. 175 (1981). (Reply Br. 3–5.) Specifically, Appellants argue that “the present claims are directed to collecting data from parking centers and traffic routes across multiple, geographically spaced locations and analyzing the data to determine pricing information Thus, the computer is controlled by the processor via the processed data, which is a patent-eligible application.” (*Id.* at 4–5.) As an initial matter, Appellants’ argument is not commensurate with the scope of claim 9. Claim 9 does not recite parking centers, traffic routes, or a computer.

With regard to Appellants’ argument that “the present claims improve computer related technology in regards to reconcile [sic] patient records” (*id.* at 3) analogous to the claims in *McRO* and *Enfish*, we do not agree. Claim 9 simply uses generic processors and manual review to perform the abstract idea, i.e., observing and evaluating information and making judgments based on those observations and evaluations. This does not improve the processor related technology. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014).

In contrast, in *McRO*, the court determined that the claimed improvement here is allowing computers to produce “accurate and realistic lip synchronization and facial expressions in animated characters” that previously could only be produced by human animators. As the district court correctly recognized, this computer automation is realized by improving the prior art through “the use of rules, rather than artists, to set the morph weights and transitions between phonemes.” The rules are limiting in that they define morph weight sets as a function of the timing of phoneme sub-sequences.

McRO, 837 F.3d at 1313 (citations omitted). Unlike *McRO*, here, the asserted improvements are to observing and evaluating information and making judgments, i.e., simply improvements to the abstract idea. Also unlike *McRO*, claim 9 merely recites functional results to be achieved. And the mere function of, e.g., receiving and comparing data, is not a “specific improvement to the way computers operate.” *Enfish*, 822 F.3d at 1336.

In view of the above, we agree with the Examiner that claim 9 is directed to an abstract idea.

Step two of the *Alice* framework has been described “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*, 573 U.S. at 217–18 (citing *Mayo*, 566 U.S. at 72–73).

Appellants argue:

Even though the claims do not need to be analyzed under the second step of *Alice*, the present claims recite significantly more. The present claims are directed to systems and methods for reconciling customer records between a plurality of different sites. This is a complex process in which patient records must be analyzed at multiple sites an[d] edited at each of these multiple sites to reconcile a patient record.

(Appeal Br. 25.)

We do not find this argument persuasive. Appellants' argument relies on the ineligible concept itself to establish that the claims recite an inventive concept. But "[i]t has been clear since *Alice* that a claimed invention's use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention 'significantly more' than that ineligible concept." *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

Taking the claim elements separately, the functions performed by the generic processors and database are purely conventional. Receiving information, comparing information (even if done by the processors), analyzing information (i.e., sorting/placing selected customer records on a list), and storing results are basic computer functions, i.e., they are well-understood, routine, and conventional functions previously known to the industry. *See Elec. Power Grp.*, 830 F.3d at 1356 (The claims "do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying in real time by use of anything but entirely conventional, generic technology. The claims therefore do not state an arguably inventive concept . . ."); *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.").

Considered as an ordered combination, the generic components of Appellants' method add nothing that is not already present when the limitations are considered separately. For example, claim 9 does not, as

discussed above, purport to improve the functioning of the processors or database. Nor does it effect an improvement in any other technology or technical field. Instead, claim 9 amounts to nothing significantly more than an instruction to apply the abstract idea using generic computer components and manual review. That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

Appellants’ other arguments have been considered but are not persuasive of error.

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 9. Independent claims 27 and 33 contain similar language and Appellants present similar arguments. (*See* Appeal Br. 15–20, 21–27.) For similar reasons, we are not persuaded that the Examiner erred in rejecting claims 27 and 33. Dependent claims 6, 11, 13, 14, 29, 32, and 37 are not separately argued. These claims fall with claims 9, 27, and 33. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claims 4, 28, and 34

Claim 4 depends from claim 9 and recites “wherein the assertions for a pair of records are made at a plurality of sites.”

Appellants argue that claim 4 “recites features that further describe how these geographically-dispersed centers reconcile patient records.” (Appeal Br. 14.) We do not find this argument persuasive.

Appellants do not persuasively argue why reciting where the function is performed should change the determination that the claim is directed to the abstract idea of observing and evaluating information and making judgments based on those observations and evaluations. Moreover, like

claim 9, claim 4 does not recite *how* the claimed results are achieved. Instead, claim 4 merely recites *where* the function is performed. And, in this case, merely reciting where the function is performed is not a “specific improvement to the way computers operate.” *See Enfish*, 822 F.3d at 1336. Therefore, we are not persuaded of error.

Dependent claims 28 and 34 contain similar language and Appellants present similar arguments. (*See* Appeal Br. 20–21, 27.) For similar reasons, we are not persuaded that the Examiner erred in rejecting claims 28 and 34.

Claim 8, 30, and 35

Claim 8 depends from claim 9 and recites “wherein the assertions are stored in a database in at least one of a central repository and a plurality of sites.”

Appellants argue that claim 8 “recites features that further describe how these geographically-dispersed centers reconcile patient records.” (Appeal Br. 14.) We do not find this argument persuasive.

Appellants do not persuasively argue why storing the recited information in a generic database should change the determination that the claim is directed to the abstract idea of observing and evaluating information and making judgments based on those observations and evaluations. Moreover, like claim 9, claim 8 does not recite *how* the claimed results are achieved. Instead, claim 8 merely recites performing the storing function. And, in this case, merely reciting the function is not a “specific improvement to the way computers operate.” *See Enfish*, 822 F.3d at 1336. Therefore, we are not persuaded of error.

Dependent claims 30 and 35 contain similar language and Appellants present similar arguments. (*See* Appeal Br. 21, 27–28.) For similar reasons, we are not persuaded that the Examiner erred in rejecting claims 30 and 35.

Claim 12

Claim 12 depends from claim 9 and recites “wherein the customers are medical patients receiving medical services at one or more of a plurality of medical facilities.”

Appellants argue that claim 12 “recites features that further describe how these geographically-dispersed centers reconcile patient records.” (Appeal Br. 15.) We do not find this argument persuasive.

Appellants do not persuasively argue why specifying the type of customer should change the determination that the claim is directed to the abstract idea of observing and evaluating information and making judgments based on those observations and evaluations. Moreover, to the extent Appellants’ argument is related to the type of information likely associated with health records, as opposed to the more general “customer records” recited in claim 9, we do not find this argument persuasive. Limiting information to particular content “does not change its character as information.” *Elec. Power Grp.*, 830 F.3d at 1353. Therefore, we are not persuaded of error.

Claims 10, 31, and 36

Claim 10 depends from claim 9 and recites “wherein the conflicting assertions about the common record include at least one of: the site where the assertion was made, a person who made the assertion, and a time stamp.”

Appellants argue that claim 10³ “recites features that further describe how these geographically-dispersed centers reconcile patient records.” (Appeal Br. 14.) We do not find this argument persuasive.

Appellants do not persuasively argue why specifying the type of information conveyed should change the determination that the claim is directed to the abstract idea of observing and evaluating information and making judgments based on those observations and evaluations. Moreover, as discussed above, limiting information to particular content “does not change its character as information.” *Elec. Power Grp.*, 830 F.3d at 1353. Therefore, we are not persuaded of error.

Dependent claims 31 and 36 contain similar language and Appellants present similar arguments. (*See* Appeal Br. 21, 28.) For similar reasons, we are not persuaded that the Examiner erred in rejecting claims 31 and 36.

DECISION

The Examiner’s rejection of claims 4, 6, 8–14, and 27–37 under 35 U.S.C. § 101 is affirmed.

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

³ Appellants refer to “Claim 9,” but describe claim 10. (*See* Appeal Br. 14, Reply Br. 6.) We treat these references to claim 9 as typographical errors.