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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte IMTIYAZ HAQUE, YAQIONG FANG, and
BIN ZHOU

Appeal 2018-003880¹
Application 12/096,040
Technology Center 3600

Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1–5, 7–11, 13, 15–17, 23–25, 27, 28, and 38–42. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

The invention relates generally to an out-patient care plan including a schedule for presenting selected content to a patient. Spec. 3, lines 26–29.

¹ The Appellants identify Koninklijke Philips Electronics N.V. as the real party in interest. Appeal Br. 2.

Claim 23 is illustrative:

23. A method for automatically facilitating and managing care of patients via automatic content session schedule adjustment and content session modification executed by a processor of a care management system, the system comprising care management-related content for a plurality of content sessions, the method comprising:

storing a patient care plan including at least a schedule for presenting selected content to a patient, each content session comprising personalized care management-related content for the patient;

communicating the selected content to the patient in accordance with the patient care plan via a user interface comprising a display;

receiving communication from the patient via the user interface regarding unavailability of the patient for a selected time period;

automatically adjusting the schedule of the patient care plan to free up the selected time period in response to the received communication regarding unavailability, wherein automatically adjust the schedule includes, responsive to the detected unavailability:

(i) re-scheduling at least part of a first content session previously scheduled during the selected time period to a time outside of the selected time period so that the selected time period is left free of any scheduled content, wherein the re-scheduling depends on the level of severity of the patient determined from a diagnosis of the patient,

(ii) modifying a second content session scheduled outside of the selected time period such that the modified second content session includes at least part of the care management-related content from the rescheduled first content session;

(iii) storing the modified second content session as part of the adjusted schedule of the patient care plan; and

(iv) communicating and displaying the patient care plan including the modified second content session to the patient via the user interface.

The Examiner rejected claims 1–5, 7–11, 13, 15–17, 23–25, 27, 28, and 38–42 under 35 U.S.C. § 101 as directed to ineligible subject matter in the form of abstract ideas.

We AFFIRM.

ANALYSIS

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental

economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive

concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under the Guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (“MPEP”) § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Guidance.

The Examiner finds the claims are “directed to the abstract idea of rescheduling content sessions based on selected criteria.” Final Act. 2.

Using independent method claim 23 as an example, and examining the claim under Prong One of our Guidance, we agree the claim is directed to a judicial exception.

Claim 23 recites storing a schedule for a session to communicate content to a patient, communicating the content to the patient, receiving a message that the patient is unavailable at a scheduled session, moving the scheduled session to a different time, and communicating the content to the patient at a rescheduled session. The claim also stores content “as part of the adjusted schedule.” The Specification describes that “content is arranged in a content database” (Spec. 6, lines 11–14), and that “storage 16 is logically partitioned to define the content database 14 and the care plan storage 18; however, in other embodiments the storage may include two or more storage elements, which may be different storage media, for storing the care management-related content and the care plan or care plans” (*id.* at lines 27–30). Because the care plan includes a schedule (*id.* at 10 lines 7–9), we construe storing content as part of a schedule to mean both schedule and content are stored in a database.

Claim 23 thus concerns storing and communicating content according to sessions that are scheduled and rescheduled on a calendar. This concept is a form of managing human behavior, as it schedules and delivers content to a patient, which is performed by tracking or organizing information, because it organizes a schedule and content related to the schedule. MPEP § 2106.04(a)(2)(II)(C)–(D). This concept is also a form of organizing or analyzing information in a way that can be performed mentally, because the scheduling and rescheduling and storage of content can be practically

performed in the human mind, and certainly with the use of paper and pen.
MPEP § 2106.04(a)(2)(III)(B).

The claim does call for the use of a “user interface comprising a display,” which the Specification describes as “any hardware capable of providing content presentation,” with examples

such as: a desktop computer; a laptop computer; a personal data assistant (PDA); a cellular telephone (i.e., cellphone); a television set having Internet connectivity integrally included and operated by a television-type remote control or other input device; a digital or analog television set having Internet connectivity provided by an add-on set-top unit and operated by a television remote control, set-top unit remote control, or other input device; or so forth.

Spec. 7, line 31 to 8 line 4. As will be also explained later, this “user interface comprising a display” is part of a limitation that only outputs content, and therefore represents insignificant extra-solution activity. *See Bilski*, 561 U.S. at 610–11 (“*Flook* stands for the proposition that the prohibition against patenting abstract ideas ‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant postsolution activity.’”) (*quoting Diehr*, 450 U.S. at 191–92).

Because claim 23 concerns a judicial exception, we advance to Prong Two of Revised Step 2A of our Guidance, to determine if the judicial exception is integrated into a practical application of the judicial exception.

The method does not improve any underlying computer by scheduling and rescheduling a session, receiving communication, or communicating content, because any processor can be used to execute the claimed method. Spec. 6 lines 11–15. In addition, the method is directed to providing care management (Spec. 1, lines 6–12), and as such the claimed method does not

improve another technology. MPEP § 2106.05(a). Because a particular computer is not required, the claim also does not define or rely on a “particular machine.” MPEP § 2106.05(b). Further, the method does not transform matter. MPEP § 2106.05(c). Instead, the claim merely stores, transmits, and receives data, and schedules and reschedules sessions. Therefore, the method has no other meaningful limitations (MPEP § 2106.05(e)), and thus merely recites instructions to execute the judicial exception on a computer (MPEP § 2106.05(f)).

The only elements, beyond the judicial exception of storing and communicating content according to a sessions that are scheduled and rescheduled on a calendar, are the preamble recitation of “executing using a processor,” and using a “user interface comprising a display,” which merely use general purpose computers and any communications network. Spec. 8 lines 4–7 (“such as the Internet, a cable television network, a satellite television network, a cellular telephone network, or so forth.”). The operations of storing, analyzing, receiving, and writing data are primitive computer operations found in any computer system. *See In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011).

“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm is beside the point.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (internal citations and quotation marks omitted). Here, independent claim 1 merely recites a “computer system” with a “processor” and “storage,” which is configured to

execute instructions that correspond to the steps of method claim 23. The Examiner finds the dependent claims are also directed to the same abstract idea. Final Act. 4. The dependent claims either narrow the manner in which sessions are rescheduled (e.g., claim 24’s “suspending the communicating of the selected content to the patient for a time interval effective for freeing up the selected time period”), or refine the nature of the communicated content (e.g., claim 41’s “wherein the modified second content session further includes at least some care management-related content from the pre-modified second content session, in addition to the at least some care management-related content from the rescheduled first content session.”). The dependent claims thus do not alter the determination that the claims are directed to abstract ideas.

Based on the above, under Prong Two, the claims are directed to abstract ideas.

Under Step 2B, we determine if the claim “Provides an Inventive Concept.” Guidance, 56. Storing and communicating content according to sessions that are scheduled and rescheduled on a calendar involve only storing and communicating content, scheduling/rescheduling sessions, and receiving communication from a patient, all of which are parts of the abstract idea itself. And even if some are computer-related additional elements beyond the abstract idea, those additional elements are well-understood, routine, and conventional activities. *Alice*, 573 U.S. at 221

Therefore, under our Guidance, claims 1–5, 7–11, 13, 15–17, 23–25, 27, 28, and 38–42 are directed to abstract ideas that do not integrate the abstract idea into a practical application, or recite an inventive concept. Now, we turn to the Appellants’ arguments.

We are not persuaded by the Appellants' argument that the claims recite eligible subject matter because they "provide a particular useful application that improves another technology or technical field (e.g., computer-assisted care management systems)." Appeal Br. 23; *see also* Reply Br. 2–3, 10–14. The claims are directed to "a personalized interactive care management system" (Spec. 6, lines 11–14), which, as set forth above, is essentially the field of "personalized interactive care" implemented on a computer. They do not improve *another* technology or technical field.

We are unpersuaded by the Appellants' argument that, according to the Appellants, the "Examiner provided no evidence of a non-computer-implemented version of some well-known, routine, conventional activity that would otherwise be the same as the claimed process." Appeal Br. 24. This is not an accurate portrayal of the requirements of subject matter eligibility, which only require that the additional elements beyond the abstract idea are well-understood, routine, conventional. *See* Guidance.

We have reviewed the remainder of the Appellants' arguments, but find them unpersuasive in light of the analysis laid out by our Guidance, as set forth above.

DECISION

We affirm the rejection of claims under 35 U.S.C. § 101.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED