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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT CRAIG COULTER, RALPH GROSS,
JEAN-FRANCOIS LALONDE, and BARBARA ANNE-MARIE SIMARD

Appeal 2018-006448
Application 12/791,208
Technology Center 3600

Before BRUCE T. WIEDER, AMEE A. SHAH, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ seeks review under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1–7, 33, and 34. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held February 4, 2020.

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Disruptive IP, Inc. (Appeal Br. 2.)

CLAIMED SUBJECT MATTER

Appellant's "invention relates to a system and method of logistics management in a clinical environment." (Spec. ¶ 3.)

Claim 1 is the sole independent claims on appeal. It recites:

1. A method of controlling patient care logistics comprising:
 - (a) providing a programmed computer;
 - (b) providing first and second user devices in operative communication with the computer via a communication network;
 - (c) under the control of a logistics software program, the computer determining from first and second service queue models, each of which includes tasks, a first priority sorted list of tasks for a first user of the first user device and a second, different priority sorted list of tasks for a second user of the second user device, respectively, wherein:
 - the first user has a first role in patient care;
 - the second user has a second, different role in patient care;
 - each priority sorted list of tasks is determined based on the first and second roles of the first and second users, and
 - the tasks included in each priority sorted list of tasks is based on linking of at least the first and second service queue models and optimal, global prioritization across the tasks included in at least the first and second service queue models;
 - (d) dispatching to each user device the priority sorted list of tasks determined for said user device in step (c);
 - (e) following step (d), the computer receiving from at least one of the user devices a change in at least one task in at least one of the first and second service queue models;
 - (f) under the control of the logistics software program and based on the change received in step (e), the computer determining for at least one of the first and second priority sorted list of tasks either an amendment to the priority sorted list of tasks or a new priority sorted list of tasks; and

(g) dispatching each amended or new priority sorted list of tasks determined in step (f) to the corresponding user device.

REJECTION

Claims 1–7, 33, and 34 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ANALYSIS

Appellant does not separately argue claims 1–7, 33, and 34. We select claim 1 as representative. Claims 2–7, 33, and 34 will stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

“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 *Ass’n 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* USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 54 (Jan. 7, 2019) (hereinafter “2019 Guidance”).

Here, the Examiner determines that claim 1 is directed to “comparing new and stored information and using rules to identify options.” (Final Action 4.) Thus, the Examiner determines that “the current claim can be performed by a person, using a pen and paper.” (*Id.* at 3.)

Appellant argues that the Examiner’s “analysis fails as a matter of law because the [Final Action] (correctly) admits that the claims do not explicitly recite an abstract idea ([Final Action] at 4).” (Appeal Br. 5.) Moreover, Appellant argues, “the concept of controlling patient care logistics does not satisfy [the abstract idea] test.” (*Id.*)

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 system and method of logistics management in a clinical environment.” (Spec. ¶ 3.) Claim 1 provides further evidence. Claim 1 recites “providing a programmed computer,” “providing first and second user devices,” “determining . . . a first priority sorted list of tasks for a first user . . . and a second, different priority sorted list of tasks for a second user,” “dispatching to each user device the priority sorted list of tasks,” “receiving from at least one of the user devices a change in at least one task,” “determining . . . either an amendment to the priority sorted list of tasks or a new priority sorted list of tasks,” and “dispatching each amended or new priority sorted list of tasks . . . to the corresponding user device.”

In short, claim 1 recites providing a computer and first and second user devices, analyzing data (determining priorities), sending data, receiving data, analyzing data, and sending data. Analyzing data, sending data, and receiving data have been determined to be directed to an abstract idea. *See Content Extraction and Transmission LLC v. Well Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (treating as an abstract idea “1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data”), *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344 (Fed. Cir. 2013) (treating as an abstract idea generating tasks to be performed based on rules); *see also Berkheimer v. HP Inc.*, 881 F.3d 1360, 1370 (Fed. Cir. 2018) (claim limitations “amount to no more than performing the abstract idea of parsing and comparing data with conventional computer components”). Moreover, “with the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.” *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016). Evaluating information to establish lists of tasks, distributing the lists, receiving and evaluating additional information, and updating the lists, as recited in claim 1, is the type of activity that can be done in the human mind and with pencil and paper.

The limitations of claim 1 do not recite technological implementation details for any of the steps. Nor does claim 1 recite “a particular way of programming or designing the software . . . , but instead merely claim[s] the resulting [method].” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016). Claim 1 does not recite *how* the analyzing, sending, and

receiving steps are performed. Claim 1 merely recites functional results to be achieved by any means. Additionally, Appellant's Specification makes clear that the computer, user devices, and communication network were well known. (*See, e.g.*, Spec. ¶¶ 104, 108.) Claim 1 does not recite a specific asserted improvement to computer technology.

In view of the above evidence, we determine that claim 1 is directed to a method for logistics management in a particular setting, in this case, a clinical environment, and that the claimed method can be performed in the human mind and with pencil and paper. Thus, claim 1 is directed to the abstract idea of mental processes. (*See* 2019 Guidance at 52.) This is in accord with the Examiner's determination. (*See* Final Action 3.)

Moreover, we do not see how the recitation of a generic "programmed computer," generic "user devices," and a generic "communication network," even in conjunction with the recited functions, "ensure[s] 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].'" *See Alice*, 573 U.S. at 221 (brackets in original) (quoting *Mayo*, 566 U.S. at 77.)

Regardless, Appellant argues that "[t]he invention solves the problem posed by the existing technological solutions, in part, by a specific arrangement of components including a programmed computer, first and second user devices, and a communication network." (Appeal Br. 6 (citing Spec. ¶¶ 56, 57, 59).) Paragraph 56 of Appellant's Specification teaches that "[d]ata access generally requires caregivers to physically move to points of data access (e.g. computer terminals or patient charts)." Paragraph 57 teaches that "[c]urrent approaches require nurses to spend significant amounts of time traveling between clinical treatment sites (e.g. patients' rooms) and the data location." And paragraph 59 recites that "[c]aregivers

are not guaranteed that the data that they seek is actually available within the electronic system.” Appellant’s argument is, in short, that the problems posed by the existing technological solutions are 1) the location of computer terminals, and 2) unavailable data. But Appellant does not point to language in claim 1 addressing either of these problems. Indeed, claim 1 does not recite a location for the user devices or that any data was previously unavailable.

Appellant argues that “[t]he specific arrangement and configuration of the claimed programmed computer, user devices, communication network, and logistics software program purposefully arranges components in a distributed architecture to achieve a technological solution to a technological problem specific to CLM [care logistics management].” (*Id.* at 7.) But unlike *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016), where the court determined that “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces,” here, claim 1 does not specify that the recited computer, user devices, and network must be arranged in a non-conventional manner. Claim 1 simply recites “user devices in operative communication with the computer via a communication network.” And even if we consider claim 1 to be limited to a particular technological environment, “limiting the claims to [a] particular technological environment . . . is, without more, insufficient to transform them into patent-eligible applications of the abstract idea at their core.” *Elec. Power Grp., LLC*, 830 F.3d at 1354. Moreover, Appellant does not explain how the claimed method improves the function of the computer, user devices, or network. Nor does Appellant explain how the claimed method makes

previously unavailable data available. We do not find Appellant’s argument persuasive.

Appellant also argues that

claim 1 recites limitations which amount to “significantly more” than the alleged abstract idea alone. Specifically, the claim is directed to improvements in patient care logistics that includes user devices, a communication network, and a computer operating under the control of a logistics software program to determine from first and second service queue models – first and second priority sorted lists of tasks for first and second users of the first and second user devices. The first and second priority sorted list of tasks are different and are determined based on *a linking of at least the first and second service queue models and optimal, global prioritization across the tasks included in the first and second service queue models.*

(Appeal Br. 10.)

We do not find this argument persuasive. In cases involving software innovations, such as we have here, the inquiry as to whether the claims are directed to an abstract idea “often turns on whether the claims focus on ‘the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an “abstract idea” for which computers are invoked merely as a tool.’” *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1303 (Fed. Cir. 2018) (quoting *Enfish, LLC*, 822 F.3d at 1335–36). Here, the computer and user devices are invoked merely as a tool. And, as indicated above, claim 1 does not recite how the linking step is performed. Claim 1 merely recites functional results to be achieved by any means. Moreover, Appellant’s argument relies on the ineligible concept itself to establish that the claims recite an inventive concept, and “[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).

Nor do we find persuasive Appellant’s attempt to analogize claim 1 to the claims in *Trading Technologies International, Inc. v. CQG, Inc.*, 675 F. App’x 1001 (Fed. Cir. 2017). (See Appeal Br. 6–7.) In the method claimed in *Trading Technologies*, “bid and asked prices are displayed dynamically along the static display, and the system pairs orders with the static display of prices and prevents order entry at a changed price.” *Trading Techs. Int’l, Inc.*, 675 F. App’x at 1003. The court determined that “[t]he claims require a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface’s structure that is addressed to and resolves a specifically identified problem in the prior state of the art” of graphical user interface devices. *Id.* at 1004. Appellant does not explain how the claimed invention, for example, “pairs orders with the static display of prices and prevents order entry at a changed price.” *See id.* at 1003. Nor does Appellant persuasively argue how the claimed invention “resolves a specifically identified problem in the prior state of the art” of graphical user interface devices. *See id.* at 1004.

We also do not find persuasive Appellant’s attempt to analogize claim 1 to Example 35, claim 3, in the December 2016 *Subject Matter Eligibility Examples: Business Methods* (“Eligibility Examples”) supplement to the *2014 Interim Guidance on Subject Matter Eligibility*.² (Appeal Br. 12.) Appellant argues that “[i]n that example, the combination of steps performed by an ATM and a mobile device was found to be ‘more

² Available at <https://www.uspto.gov/sites/default/files/documents/ieg-bus-meth-exs-dec2016.pdf>.

than' a conventional verification process," and that this is similar to Appellant's "claim 1 [which] recites a specific way for controlling patient care logistics." (*Id.*)

Claim 1 of Example 35 recites:

1. A method of conducting a secure automated teller transaction with a financial institution by authenticating a customer's identity, comprising the steps of:
 - obtaining customer-specific information from a bank card,
 - comparing, by a processor, the obtained customer-specific information with customer information from the financial institution to verify the customer's identity, and
 - determining whether the transaction should proceed when a match from the comparison verifies the authenticity of the customer's identity.

Claim 3 of Example 35 recites:

3. A method of conducting a secure automated teller transaction with a financial institution by authenticating a customer's identity, comprising the steps of:
 - obtaining customer-specific information from a bank card,
 - comparing, by a processor, the obtained customer-specific information with customer information from the financial institution to verify the customer's identity, by
 - generating a random code and visibly displaying it on a customer interface of the automated teller machine,
 - obtaining, by the automated teller machine, a customer confirmation code from the customer's mobile communication device that is generated in response to the random code, and
 - determining whether the customer confirmation code matches the random code, and
 - automatically sending a control signal to an input for the automated teller machine to provide access to a keypad when a match from the analysis verifies the authenticity of the customer's identity, and to deny access to a keypad so that the

transaction is terminated when the comparison results in no match.

In discussing claims 1, 2, and 3, the Eligibility Examples explains that the claim steps “describe a method of fraud prevention by identity verification before proceeding with a banking transaction.” (Eligibility Examples 9; *see also id.* at 8, 11.) The Eligibility Examples determines that claims 1, 2, and 3 are directed to an abstract idea. (*Id.* at 8, 9, 11.)

With regard to claim 1 of the Eligibility Examples, in addition to the steps of claim 1 “that describe the abstract idea of preventing fraud through verifying a customer’s identity, the claim recites the additional limitation of obtaining customer-specific information from a bank card. This additional element taken individually represents a conventional action of an ATM.” (*Id.* at 9.) Claim 1 “also recites the additional element of a processor comparing data. This processor is no more than a generic computer component, and the comparison performed by the processor does not represent any computer function beyond what processors typically perform.” (*Id.*) Thus, the Eligibility Examples informs us that “claim 1 is ineligible.” (*Id.*)

With regard to claim 3 of the Eligibility Examples, the combination of steps “operates in a non-conventional and non-generic way to ensure that the customer’s identity is verified in a secure manner that is more than the conventional verification process employed by an ATM alone.” (*Id.* at 11.) Specifically, the ATM provides a random code, the ATM obtains a confirmation code from the customer’s mobile communication device, determines whether the confirmation code matches the random code, and

automatically sends a control signal for the ATM to provide access to a keypad when a match verifies the customer's identity. (*Id.*) Moreover, the combination of obtaining information from the mobile communication device (instead of the ATM keypad) and using the customer confirmation code (instead of a PIN) to verify the customer's identity does not merely select information by content or source . . . , *but instead describes a process that differs from the routine and conventional sequence of events normally conducted by ATM verification.*

(*Id.* (emphasis added).) Thus, “[t]he additional elements in claim 3 . . . represent significantly more (*i.e.*, provide an inventive concept),” and claim 3 recites patent-eligible subject matter. (*Id.*)

In contrast, and as discussed in more detail below, Appellant's recited generic computer, generic user devices, and generic communication network perform routine functions. Moreover, Appellant does not persuasively show why, e.g., Appellant's claim 1 is analogous to claim 3, but not claim 1, in Example 35. 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.) Therefore, we do not find Appellant's argument persuasive.

Appellant also argues that the claimed invention does not preempt “all methods and systems for ‘controlling patient care logistics.’” (Appeal Br. 10.) We do not find this argument persuasive. Preemption is not a separate test. “Where a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). In other words, “preemption may signal patent ineligible subject matter,

[but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Thus, under prong one of the two prong test in the 2019 Guidance, claim 1 recites an abstract idea; and, under prong two, additional elements in claim 1 do not “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.” (*See* 2019 Guidance at 54.) As such, under step one of the *Alice* framework, claim 1 is directed to an abstract idea, and we move to step two.

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 (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73).

Taking the claim elements separately, the functions performed by the generic “computer,” generic “user devices,” and generic “communication network” are purely conventional. (*See, e.g.*, Spec. ¶¶ 104, 108.) Analyzing data, sending data, receiving data, analyzing data, and sending data 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 computing components of Appellant’s claimed invention add nothing that is not already present when the limitations are considered separately. (*See, e.g.*, Spec. ¶¶ 104, 108; *see also* Fig. 1.) For example, claim 1 does not, as discussed above, purport to improve the functioning of the computer, user devices, or network itself. Nor does it effect an improvement in any other technology or technical field. Instead, claim 1 amounts to nothing significantly more than an instruction to apply the abstract ideas using generic computing components performing routine computer functions. That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

Regardless, Appellant argues that “the claimed logistics software program . . . has not been shown to be what caregivers ‘do routinely.’” (Appeal Br. 9.) Appellant further argues that “[t]he [Final Action] has not shown that any of the claim elements are conventional much less that the combination is conventional.” (*Id.*) We do not find these arguments persuasive. As discussed above, the functions performed by the generic computer, generic user devices, and generic communication network are purely conventional. Moreover, Appellant’s argument relies on the ineligible concept itself to establish that the claims recite an inventive concept. But, as discussed above, “[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*, 899 F.3d at 1290.

Appellant argues that “[t]he absence of prior art rejections in the Final Office Action . . . leads to the conclusion that the claim elements, taken alone or in combination, are not conventional.” (Appeal Br. 5.) We do not find this argument persuasive. Even if the claimed techniques are “[g]roundbreaking, innovative, or even brilliant,” that is not enough for patent eligibility. *Ass’n for Molecular Pathology*, 569 U.S. at 591. “The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981).

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1 under § 101. Claims 2–7, 33, and 34 are not separately argued and fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

The Examiner’s rejection of claims 1–7, 33, and 34 under 35 U.S.C. § 101 is affirmed.

Specifically:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–7, 33, 34	101	eligibility	1–7, 33, 34	

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