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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY LEE MCLAREN,
WILLIAM DYER RODES II,
and JOHN MALCOLM TOUPS

Appeal 2018-006780
Application 12/789,783
Technology Center 3600

Before ANTON W. FETTING, DAVID C. MCKONE, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Jeffrey Lee McLaren, William Dyer Rodes II, and John Malcolm Toups (Appellant²) seeks review under 35 U.S.C. § 134 of a final rejection of claims 1–19, the only claims pending in the application on appeal. This is the second time this Application has come before us.³ We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellant invented a way of managing medical case and chronology information for one or more medical practices. Spec. para. 2.

An understanding of the invention can be derived from a reading of exemplary claim 8, which is reproduced below (bracketed matter and some paragraphing added).

8. A method comprising:

[1] receiving electronic medical case board information

from a central medical information management system,
wherein the electronic medical case board information
includes a plurality of patient treatment entries that
correspond to patients scheduled for care

by a medical practice at a practice location during
a predetermined period of time,

¹ Our decision will make reference to the Appellant’s Appeal Brief (“Appeal Br.,” filed December 11, 2017) and Reply Brief (“Reply Br.,” filed June 18, 2018), and the Examiner’s Answer (“Ans.,” mailed April 19, 2018), and Final Action (“Final Act.,” mailed July 10, 2017).

² 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 is Medaxion, LLC (Appeal Br. 2).

³ In a Decision, mailed May 20, 2016, we reversed the Examiner’s sole rejection of claims 1–19 under 35 U.S.C. § 102(b).

wherein each of the patient treatment entries includes a patient identifier, and one of a plurality of predefined phases of care;

[2] providing a plurality of display modes corresponding to the plurality of phases of care,

wherein each of the display modes displays the patient treatment entries having the one of the predefined phases of care corresponding to the display mode;

[3] receiving a patient update corresponding to one of the patient treatment entries using a user interface,

the user interface comprising

a display and capable of receiving user input

and

the patient update comprising

information associated with a medical care event for the patient associated with the corresponding patient treatment entry;

[4] communicating the patient update to the medical information management system;

[5] receiving updated electronic medical case board information from the central medical information management system,

the updated electronic medical case board information incorporating the information from the patient update;

and

[6] updating the display based on the updated electronic medical case board information.

Claims 1–19 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of results desired.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to Claim Construction

01. The disclosure contains no lexicographic definition of “display mode.”

Facts Related to Appellant’s Disclosure

02. Patient treatment interface 508 may present a patient treatment record in three different display modes. One mode may present patient and case information in such a manner that facilitates modification of specific data elements. Another display mode may display case chronology and facilitate the tracking of medical events for the case in corresponding time records. Another display mode of patient treatment interface 508 may permit the recording of case data items corresponding to medical events or items not having a time or duration associated with them. Such case items may be listed in a checklist form. Spec. para. 104.

ANALYSIS

Initially we construe the term “display mode.” This is not lexicographically defined. Three examples are described, *viz.*, (1) a manner that facilitates modification of specific data elements; (2) display case chronology and facilitate the tracking of medical events for the case in

corresponding time records; and (3) recording of case data items corresponding to medical events or items not having a time or duration associated with them. FF 01 and 02. Each of these is a manner of display that facilitates some way of data display and update. In particular, none of these describes a physical or structural attribute, and no technological attribute of the display or manner of display. Thus a “display mode” is construed as a manner of display that facilitates some way of data display and update, i.e., a manner of layout.

STEP 1⁴

Claim 8, as a method claim, nominally recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. The issue before us is whether it is directed to a judicial exception without significantly more.

STEP 2

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us? To answer that question, . . . consider the elements of each 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. [The Court] described step two of this analysis 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.”

⁴ For continuity of analysis, we adopt the steps nomenclature from 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”).

Alice Corp., Pty. Ltd. v CLS Bank Intl, 573 U.S. 208, 217–18 (2014) (citations omitted) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012)). To perform this test, we must first determine what the claims are directed to. This begins by determining whether the claims recite one of the judicial exceptions (a law of nature, a natural phenomenon, or an abstract idea). Then, if claims recite a judicial exception, determining whether the claims at issue are directed to the recited judicial exception, or whether the recited judicial exception is integrated into a practical application of that exception, i.e., that the claims “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.” Revised Guidance, 84 Fed. Reg. at 54. If the claims are directed to a judicial exception, then finally determining whether the claims provide an inventive concept because the additional elements recited in the claims provide significantly more than the recited judicial exception.

STEP 2A Prong 1

At a high level, and for our preliminary analysis, we note that method claim 8 recites receiving information, providing display modes, receiving and communicating update data, receiving more information, and updating a display. Providing display modes is no more than using a display with its generic capabilities of displaying different data layouts, i.e., display. Communicating data is data transmission. Updating a display is data update and display. Thus, claim 8 recites receiving, displaying, transmitting, and updating data. None of the limitations recite technological implementation

details for any of these steps, but instead recite only results desired by any and all possible means.

From this we see that claim 8 does not recite the judicial exceptions of either natural phenomena or laws of nature.

Under Supreme Court precedent, claims directed purely to an abstract idea are patent in-eligible. As set forth in the Revised Guidance, which extracts and synthesizes key concepts identified by the courts, abstract ideas include (1) mathematical concepts⁵, (2) certain methods of organizing human activity⁶, and (3) mental processes⁷. Among those certain methods of organizing human activity listed in the Revised Guidance are managing personal behavior or relationships or interactions between people. Like those concepts, claim 8 recites the concept of displaying patient medical information to those needing it. Specifically, claim 8 recites operations that would ordinarily take place in advising one to update and display patient medical information including medical care event information, the display mode based on phase of care. The advice to update and display patient medical information including medical care event information, the display

⁵ See, e.g., *Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); *Mackay Radio & Telegraph Co. v. Radio Corp. of Am.*, 306 U.S. 86, 94 (1939); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018).

⁶ See, e.g., *Bilski*, 561 U.S. at 628; *Alice*, 573 U.S. at 219-20; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed Cir. 2014); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1383 (Fed. Cir. 2017); *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1160–61 (Fed. Cir. 2018).

⁷ See, e.g., *Benson*, 409 U.S. at 67; *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–72 (Fed. Cir. 2011); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

mode based on phase of care involves displaying patient information, which is a behavioral management act, and communicating the data for display, which is an act ordinarily performed in the stream of management. For example, claim 8 recites “updating the display based on the updated electronic medical case board information,” which is an activity that would take place whenever one is conveying patient data to medical staff to manage their activities. Similarly, claim 8 recites “communicating the patient update to the medical information management system” which is also characteristic of managing communications.

The Examiner determines the claims to be directed to updating, communicating and displaying received patient treatment entries within a surgical hospital environment. Final Act. 2.

The preamble to claim 8 does not recite what it is to achieve, but the steps in claim 8 result in displaying patient medical information to those in need of it, absent any technological mechanism other than a conventional computer for doing so.

As to the specific limitations, limitations 1, 3, and 5 recite data reception. Limitation 2 recites providing display modes, i.e., data layouts (*see* claim construction *supra*), which is part of conventional computer display. Limitations 4 and 6 recite conventional data transmission and display. The limitations thus recite advice for updating and displaying patient medical information including medical care event information, the display layout based on phase of care. To advocate updating and displaying patient medical information including medical care event information, the display layout based on phase of care is conceptual advice for results desired and not technological operations.

The Specification at paragraph 2 describes the invention as relating to managing medical case and chronology information for one or more medical practices. Thus, all this intrinsic evidence shows that claim 8 recites managing medical case and chronology information for one or more medical practices, i.e., displaying patient medical information to those needing it. This is consistent with the Examiner's determination.

This in turn is an example of managing personal behavior or relationships or interactions between people as a certain method of organizing human activity because displaying patient medical information to those needing it is a conventional way of directing behavior of caregivers toward patients. The concept of displaying patient medical information to those needing it by updating and displaying patient medical information including medical care event information, the display mode based on phase of care is one idea for how to display such information. The steps recited in claim 8 are part of how this might conceptually be premised.

Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1378, 1384 (Fed. Cir. 2019) (display to help users process information more quickly); *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (2016) (customizing user interface and tailoring content).

From this we conclude that at least to this degree, claim 8 recites displaying patient medical information to those needing it by updating and displaying patient medical information including medical care event information, the display mode based on phase of care, which is a way of managing personal behavior or relationships or interactions between people,

a certain method of organizing human activity identified in the Revised Guidance, and, thus, an abstract idea.

STEP 2A Prong 2

The next issue is whether claim 8 not only recites, but is more precisely directed to this concept itself or whether it is instead directed to some technological implementation or application of, or improvement to, this concept, i.e., integrated into a practical application.⁸

At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. At some level, “all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. “[A]pplication[s]” of such concepts “to a new and useful end,” we have said, remain eligible for patent protection. Accordingly, in applying the § 101 exception, we must distinguish between patents that claim the “buildin[g] block[s]” of human ingenuity and those that integrate the building blocks into something more.

Alice, 573 U.S. at 217 (citations omitted).

Taking the claim elements separately, the operation performed by the computer at each step of the process is expressed purely in terms of results, devoid of implementation details. Steps 1, 3, and 5 are pure data gathering steps. Limitations describing the nature of the data do not alter this. Steps 2, 4, and 6 are insignificant activity, such as storing, transmitting, or displaying the results. All purported inventive aspects reside in how the data are interpreted and the results desired, and not in how the process physically

⁸ See, e.g., *Alice*, 573 U.S. at 223, discussing *Diamond v. Diehr*, 450 U.S. 175 (1981).

enforces such a data interpretation or in how the processing technologically achieves those results.

Viewed as a whole, Appellant's claim 8 simply recites the concept of displaying patient medical information to those needing it by updating and displaying patient medical information including medical care event information, the display mode based on phase of care as performed by a generic computer. This is no more than conceptual advice on the parameters for this concept and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

Claim 8 does not, for example, purport to improve the functioning of the computer itself. Nor does it affect an improvement in any other technology or technical field. The Specification spells out different generic equipment⁹ and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of displaying patient medical information to those needing it by updating and displaying patient medical information including medical care event information, the display mode based on phase of care under different scenarios. It does not describe any particular improvement in the manner a computer functions. Instead, claim 8 at issue amounts to nothing significantly more than an instruction to apply displaying patient medical information to those needing it by updating and displaying patient medical information including medical care event information, the display mode based on phase of care using some unspecified, generic computer. Under

⁹ The Specification describes workstations, laptops, netbooks, tablet computers, personal data assistants (PDAs), or any other suitable computing device. Spec. para. 33.

binding precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

None of the limitations reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field; applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease or medical condition; implements a judicial exception with, or uses a judicial exception in conjunction with, a particular machine or manufacture that is integral to the claim; effects a transformation or reduction of a particular article to a different state or thing; or applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception.

We conclude that claim 8 is directed to achieving the result of displaying patient medical information to those needing it by advising one to update and display patient medical information including medical care event information, the display mode based on phase of care, as distinguished from a technological improvement for achieving or applying that result. This amounts to managing personal behavior or relationships or interactions between people, which fall within certain methods of organizing human activity that constitute abstract ideas. The claim does not integrate the judicial exception into a practical application.

STEP 2B

The next issue is whether claim 8 provides an inventive concept because the additional elements recited in the claim provide significantly more than the recited judicial exception.

The introduction of a computer into the claims does not generally alter the analysis at *Mayo* step two.

the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional feature[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 573 U.S. at 223–24 (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea [] on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer for receiving, displaying, transmitting, and updating data amounts to electronic data query and retrieval—one of the most basic functions of a computer. The limitation of a user interface is not a step, but a recitation of what is used for data reception, *viz.* an interface comprising a display, which is a generic computer data entry display. All of these computer functions are generic, routine, conventional computer activities that are performed only

for their conventional uses. *See Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). *See also In re Katz Interactive Call Processing Patent Litigation*, 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”). None of these activities are used in some unconventional manner nor do any produce some unexpected result. Appellant does not contend they invented any of these activities. In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP America, Inc. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellant’s claim 8 add nothing that is not already present when the steps are considered separately. The sequence of data reception-display-transmission-update is equally generic and conventional. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission), *Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling,

and monitoring). The ordering of the steps is therefore ordinary and conventional.

We conclude that claim 8 does not provide an inventive concept because the additional elements recited in the claim do not provide significantly more than the recited judicial exception.

REMAINING CLAIMS

Claim 8 is representative. The remaining method claims merely describe process parameters. We conclude that the method claims at issue are directed to a patent-ineligible concept itself, and not to the practical application of that concept.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’

Alice, 573 U.S. at 226. As a corollary, the claims are not directed to any particular machine.

LEGAL CONCLUSION

From these determinations we further determine that the claims do not recite an improvement to the functioning of the computer itself or to any other technology or technical field, a particular machine, a particular transformation, or other meaningful limitations. From this we conclude the claims are directed to the judicial exception of the abstract idea of certain methods of organizing human activity as exemplified by the managing personal behavior or relationships or interactions between people of

displaying patient medical information to those needing it by updating and displaying patient medical information including medical care event information, the display mode based on phase of care, without significantly more.

APPELLANT'S ARGUMENTS

As to Appellant's Appeal Brief arguments, we adopt the Examiner's determinations and analysis from Final Action 2–5 and Answer 3–7 and reach similar legal conclusions. We now turn to the Reply Brief.

We are not persuaded by Appellant's argument that

The Final Office Action and Examiner's Answer alleges that certain elements of the pending claims amount to well-understood, routine, and conventional activities. *See e.g.*, Final Office Action, at 4; Examiner's Answer, at 3. These allegations, however, are entirely conclusory, fail to meet the recent examination guidelines, and are insufficient under the controlling Berkheimer standard. Indeed, the Examiner fails to provide any evidentiary support that such elements comprise well-understood, routine or conventional activity. Perhaps more importantly, the Examiner has not even attempted to address whether the ordered combinations of elements in the claims constitute well-understood, routine, or conventional activity.

Reply Br. 3–4. Evidence to support the determinations that the steps are routine and conventional is cited *supra*.

We are not persuaded by Appellant's argument that “the claims do not need to be directed to an improvement to a computer in order to be patent-eligible. As recognized by the Federal Circuit, claims are not abstract if they are directed to an improvement in computer functionality or other technology.” Reply Br. 4. The statement is factually correct, but unhelpful.

The claims do not recite an improvement in computer functionality or other technology.

Appellant contends “the pending claims recite an improvement to computer technology because they recite a technological improvement to the conventional method of distributing medical case board information (i.e., via a physical case board).” *Id.* But Appellant’s contention relates to how information is conveyed to a user, not to the underlying technology. *See Trading Techs.*, 921 F.3d at 1384 (“The claims are focused on providing information to traders in a way that helps them process information more quickly, not on improving computers or technology.”).

CONCLUSIONS OF LAW

The rejection of claims 1–19 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

CONCLUSION

The rejection of claims 1–19 is affirmed.

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–19	101	Eligibility	1–19	

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) (2011).

AFFIRMED