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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD PHILIPPE

Appeal 2019-001809
Application 12/853,709
Technology Center 3600

Before ELENI MANTIS MERCADER, NORMAN H. BEAMER, and GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's Final rejection of claims 1, 4–13, and 16–23, which are all pending claims. Appeal Br. 8. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

BACKGROUND

A. The Invention

Appellant's invention is directed to "provisioning medical supplies for specific procedures and tracking medical supplies associated with those medical procedures." Spec. ¶ 1. Independent claim 1 is representative and reproduced below, with added text enclosed in square brackets:

> 1. A system for automatically managing a retrieval and return process of medical supplies for a medical procedure, the system comprising:
> [a] a data storage device for storing, at least, medical supply data related to one or more medical supplies available to be retrieved;
> [b] a supply retrieval monitor operable to automatically collect supply preference data related to one or more retrieval and return processes for one or more medical procedures associated with at least one of:
> [c] a procedure type of the medical procedure,
> [d] an attending surgeon identifier associated with a surgeon scheduled to perform the medical procedure, and
> [e] at least one nursing staff identifier associated with a nursing staff scheduled to perform the medical procedure;
> [f] a microphone operable to receive a voice command associated with the retrieval and return process of the medical supplies;

[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies Logi D Inc. as the real party in interest. Appeal Br. 3.

[g] a case cart for collecting the medical supplies retrieved from one or more storage locations within a medical facility, the case cart being movable within the medical facility;

[h] a processor in communication with the at least one data storage device and the supply retrieval monitor, wherein in response to receiving a retrieval trigger indicating the medical procedure is scheduled, the processor is operable to:

[i] continuously receive the supply preference data from the supply retrieval monitor and, in response to receiving the supply preference data, to automatically update a medical supply template generated for the medical procedure;

[j] automatically generate an electronic pick list identifying a set of predictable medical supplies for the medical procedure based on the updated medical supply template;

[k] for each predictable medical supply retrieved, receive a supply retrieved data for that predictable medical supply via at least one of a user interface and the microphone, and to store the supply retrieved data in the data storage device, the supply retrieved data comprising a retrieval status, a retrieved quantity and a retrieval location;

[l] continuously detect an availability of information in respect of one or more unpredictable medical supplies, wherein the unpredictable medical supplies comprises pre-procedure unpredictable medical supplies and in-procedure unpredictable medical supplies;

[m] in response to detecting the information in respect of one or more unpredictable medical supplies is available, automatically update the electronic pick list to include the one or more unpredictable medical supplies and to send the updated electronic pick list to the one or more storage locations;

[n] after completion of the medical procedure, receive a supply returned data for each unused medical supply returned to the one or more storage locations via the at least one of the user interface and the microphone, wherein the supply returned data comprises a return status and a return location; and

[o] automatically update the medical supply template based on the supply returned data and data identifying the one or more unpredictable medical supplies identified for the medical procedure.

Appeal Br. 17–18 (Claims Appendix).

B. The Rejection on Appeal

The Examiner rejects claims 1, 4–13, and 16–23 under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. Final Act. 2.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments. Arguments Appellant could have made but chose not to make are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Except where noted, we adopt the Examiner's findings and conclusions as our own, and add the following primarily for emphasis.

A. Ineligible Subject Matter Rejection of Claims 1, 4–13, and 16–23

The Examiner determines the claims are patent ineligible under 35 U.S.C. § 101 "because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more." Final Act. 2; *see also Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014) (describing the two-step framework "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts").

After the docketing of this appeal, the USPTO published revised guidance on the application of § 101 ("Guidance"). *See* USPTO's 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Memorandum"). Pursuant to the Guidance "Step 2A," the office first looks to whether the claim recites:

(1) Prong One: 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) Prong Two: additional elements that integrate the judicial exception into a practical application (*see* 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, does the Office then (pursuant to the Guidance "Step 2B") look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that are 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 Memorandum Section III.

We are not persuaded the Examiner's rejection is in error.

1. Step 2A

Appellant argues that "the claimed subject matter is directed at a specific improvement to a retrieval and return process of medical supplies for a medical procedure." Appeal Br. 11. Particularly, Appellant contends that electronic pick lists "can be updated 'on-the-fly' as more accurate predictions are made for a particular procedure (e.g. as further details are learned about the patient, about the personnel assisting with the procedure, and so on)" (Appeal Br. 11 (quoting Spec. ¶ 46)), and that "the supply management module can 'learn' to provide improved predictions as more and more data is collected" (Appeal Br. 12 (quoting Spec. ¶ 49)).

Prong One

Pursuant to Step 2A, Prong One of the Guidance, we are not persuaded the Examiner erred in determining claims 1, 4–13, and 16–23 recite an abstract idea. *See* Final Act. 2–6; Ans. 3–10; Memorandum Section III(A)(1) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception), 84 Fed. Reg. at 54. Particularly, the Examiner finds claim 1 is "directed to the abstract idea of receiv[ing] data about actual supplies for actual procedures, generat[ing] a template based on the received data, receiv[ing] data about predictable and un-predictable medical supplies picked, and updat[ing] and transmit[ing] the updated pick list." Final Act. 2. (emphasis omitted). We first note claim 1's preamble recites "managing a retrieval and return process of medical supplies for a medical procedure." We find that when analyzing claim 1 under the Guidance, claim 1 recites:

(1) "certain methods of organizing human activity" including "managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions)"; and

(2) "mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, [and] opinion."

Memorandum, 84 Fed. Reg. at 52.

Particularly, claim 1's limitations [i]–[o] recite the actions or instructions followed by hospital personnel in preparation for, during, and after a medical procedure. These actions or instructions often require observation, evaluation, and/or judgment. The Specification supports this finding. It states that "it is preferable that a higher percentage of the supplies necessary for a particular procedure are picked by lesser-skilled personnel to optimize allocation of the time of the highly-skilled personnel," and that "it

is more efficient for such tasks to be delegated to lesser-skilled individuals while highly-skilled medical personnel can focus on medical tasks." Spec. ¶ 29; *see also id.* at Fig. 1, ¶¶ 56–82 (describing duties performed by "first user 22," "second user 32," "third user 42," and "fourth user 52"). For example, actions such as "update a medical supply template generated for the medical procedure" (step [i]) and "detect an availability of information in respect of one or more unpredictable medical supplies" (step [l]) are (a) instructions followed by medical personnel that (b) require the medical personnel to perform observations, evaluation, and/or judgment.

These steps are abstract ideas because they accomplish both "managing personal behavior or relationships between people" and performing "observation, evaluation, judgment, [and] opinion." Memorandum Section I, 84 Fed. Reg. at 52. Thus, this claim portion recites both "[c]ertain methods of organizing human activity" and "mental processes." *Id.* Accordingly, claim 1 "recites a judicial exception . . . [and] requires further analysis in Prong Two" of the Guidance. Memorandum, 84 Fed. Reg. at 54.

Prong Two

We also are not persuaded the Examiner erred pursuant to Step 2A, Prong Two of the Guidance. Limitations [a] ("a data storage device"), [b], ("a supply retrieval monitor") and [f] (a "microphone") perform mere data gathering and/or data displaying functions, and are therefore insignificant extra-solution activity. Memorandum, 84 Fed. Reg. at 55; *see also* n.31. Limitations [c] ("a procedure type"), [d] ("an attending surgeon identifier"), [e] ("at least one nursing staff identifier"), and [g] ("a case cart") recite elements that generally link the use of the judicial exception to the surgical

environment and are insufficient to integrate the judicial exception into a practical application. 84 Fed. Reg. at 55; *see also* n.32.

Regarding remaining limitation [h] ("a processor"), the Examiner finds, and we agree, that the disclosure "discusses the generic computer structure used to implement the invention" (Final Act. 5, citing Spec. ¶ 36), and that "[g]eneric computer components recited as performing generic computer functions that are well-understood, routine and conventional activities amount to no more than implementing the abstract idea with a computerized system." Final Act. 5. The limitation, thus, represents the mere use of "a computer as a tool to perform an abstract idea," and "does no more than generally link the use of a judicial exception to a particular technological environment." Memorandum, 84 Fed. Reg. at 55; *see also* Final Act. 8–9; *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1378, 1385 (Fed. Cir. 2019) ("[T]he purported advance is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.") (citation and quotation marks omitted).

Appellant argues that "the claimed subject matter is directed at a specific improvement to a retrieval and return process of medical supplies for a medical procedure," (Appeal Br. 11) with improvements including pick lists that "can be updated 'on-the-fly'" (Appeal Br. 11), and a "supply management module" that "can 'learn' to provide improved predictions as more and more data is collected." Appeal Br. 12.

Appellant has not shown the claim includes additional elements that improve the underlying computer, or other technology. *See Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) ("[M]erely adding computer functionality to increase the speed or

efficiency of the process does not confer patent eligibility on an otherwise abstract idea."); *cf. Trading Techs. Int'l, Inc. v. IBG LLC*, No. 2017-2257, 2019 WL 1716242, at *3 (Fed. Cir. 2019) ("This invention makes the trader faster and more efficient, not the computer. This is not a technical solution to a technical problem."). Moreover, Appellant's purportedly improved abstract concept is still an abstract concept under the Guidance. *See Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) ("[A] claim for a new abstract idea is still an abstract idea.") (emphasis omitted).

Accordingly, we determine independent claim 1 does not integrate the judicial exception into a practical application. *See* Memorandum, 84 Fed. Reg. at 54. Because the "claim recites a judicial exception and fails to integrate the exception into a practical application" (*id.* at 51), "the claim is directed to the judicial exception" (*id.* at 54).

2. Step 2B

Appellant has not shown the recited additional elements (or combination of elements) amount to significantly more than the judicial exception itself. *See* Final Act. 4–6; Ans. 5–7; Memorandum, Section III(B) (Step 2B), 84 Fed. Reg. at 56. The Examiner finds, and we agree, that "[t]he claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements when considered both individually and as an ordered combination do not amount to significantly more than the abstract idea." Final Act. 4. The Examiner further finds, and we agree, that the disclosure describes a "generic computer structure used to implement the invention" (Final Act. 5, citing Spec. ¶ 36), in which "[g]eneric computer components recited as performing generic computer functions that are well-understood, routine and

conventional activities amount to no more than implementing the abstract idea with a computerized system." Final Act. 5; *see also Alice*, 573 U.S. at 226. Based on the record before us, we agree with the Examiner that the claimed additional elements and combination of elements when considered both individually and as an ordered combination do not amount to significantly more than the abstract idea, but instead recite only generic components and steps that are well-understood, routine, and conventional.

Accordingly, we agree with the Examiner that independent claim 1 is patent ineligible. We conclude the same for independent claim 13, and all dependent claims.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 4–13, 16–23	101	Eligibility	1, 4–13, 16–23	

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