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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVE JOURDAN and JOEL SCHAUBERT

Appeal 2019-003208
Application 13/665,508
Technology Center 3600

Before JOSEPH L. DIXON, ST. JOHN COURTENAY, III, and
CATHERINE SHIANG, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 44, 46, 47, 49, 50, 53–69, and 84, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ We use “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Hospital Housekeeping Systems, LLC as the real party in interest. Appeal Br. 2.

STATEMENT OF THE CASE

Introduction

The present invention relates to “managing services in health care facilities.” Spec. ¶ 1.

According to one embodiment, a method of managing services in a health care facility includes receiving one or more stat requests; automatically identifying, for at least one of the stat requests, a candidate to perform at least one task associated with the stat request; automatically determining whether the candidate already has a predetermined maximum number of stat requests; if the candidate already has the predetermined maximum number of stat requests, notifying a manager that the candidate is not available to fulfill the stat request; and paging at least one person to fulfill the stat request.

Spec. ¶ 7. Claim 44 is exemplary:

44. A method of reducing misleading signals from a system used to direct services in a health care facility, comprising:

receiving, by an environmental services management system implemented on one or more computing devices, one or more messages associated with one or more actions to be performed in the hospital;

placing, by a queue manager of the environmental services management system, the one or more messages in a queue;

assessing, by a queue processor of the environmental services management system, a queued message, in combination with one or more other messages, against one or more misleading message patterns stored in a memory, wherein the one or more misleading message patterns comprises two or more messages comprising at least one misleading message, wherein the at least one misleading message is at least in part a fictional message, wherein the fictional message is a message that is initiated or entered into a system by user even though the

message is known to not reflect actual conditions or needed actions, wherein the fictional message is entered or initiated for administrative purposes for the purpose of bed hiding;

determining, by the queue processor, that the combination of the queued message and the one or more other messages matches one or more of the misleading message patterns so as to indicate or suggest that the message is a misleading message based on the message being at least in part a fictional message entered or initiated for administrative purposes for the purpose of bed hiding; and

removing, by the environmental services management system, upon determining that the queued message matches a pattern so as to indicate or suggest that the message is a misleading message based on the message being at least in part a fictional message, the message from the queue or modifying the message.

References and Rejections²

Claims Rejected	35 U.S.C. §	References/Basis
44, 46, 47, 49, 50, 53–69, 84	101	Subject Matter Eligibility
44, 46, 47, 49, 50, 53, 54, 57, 64–68, 84	103	Shine (US 2007/0067199 A1; pub. Mar. 22, 2007), Shanahan (US 2007/0055558 A1; pub. Mar. 8, 2007), Tallman (US 5,471,382; iss. Nov. 28, 1995), Meisel (Waiting Room: How Hospitals are Killing E.R. Patients; July 24, 2008)
55, 56, 58, 59	103	Shine, Shanahan, Tallman, Meisel, Rosow (US 2003/0074222 A1; pub. Apr. 17, 2003)
60–63, 69	103	Shine, Shanahan, Tallman, Meisel, Gailloux (US 8,321,515 B1; iss. Nov. 27, 2012)

² Throughout this opinion, we refer to the (1) Final Office Action dated March 8, 2018 (“Final Act.”); (2) Appeal Brief dated October 26, 2018 (“Appeal Br.”); (3) Examiner’s Answer dated January 18, 2019 (“Ans.”); and (4) Reply Brief dated March 18, 2019 (“Reply Br.”).

ANALYSIS

35 U.S.C. § 101

We disagree with Appellant’s arguments. To the extent consistent with our analysis below, we adopt the Examiner’s findings and conclusions in (i) the action from which this appeal is taken and (ii) the Answer.

Section 101 of the Patent Act provides “[w]hoever 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. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (internal quotation marks and citation omitted).

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, 67 (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. (15 How.) 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 (citation 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 United States Patent and Trademark Office published revised guidance on the application of § 101. USPTO, 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”).³ 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) (Step 2A, Prong 1); 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)) (9th ed. rev. 08.2017 2018) (Step 2A, Prong 2).

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

³ The Guidance was updated in October 2019.

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. (Step 2B.)

See Guidance, 84 Fed. Reg. at 54–56.

Step 2A, Prong 1 of the Guidance

Turning to Step 2A, Prong 1 of the Guidance, claim 44 (with emphases) recites:⁴

44. A method of *reducing misleading signals from a system used to direct services in a health care facility*, comprising:

receiving, by an environmental services management system implemented on one or more computing devices, *one or more messages associated with one or more actions to be performed in the hospital*;

placing, by a queue manager of the environmental services management system, *the one or more messages in a queue*;

assessing, by a queue processor of the environmental services management system, *a queued message, in combination with one or more other messages, against one or more misleading message patterns stored in a memory, wherein the one or more misleading message patterns comprises two or more messages comprising at least one misleading message, wherein the at least one misleading message is at least in part a fictional message, wherein the fictional message is a message that is initiated or entered into a system by user even though the message is known to not reflect actual conditions or needed*

⁴ We select claim 44 as the representative claim, and group the remaining claims accordingly under 37 C.F.R. 41.37(c)(1)(iv) (“[T]he failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of each grouped claim separately.”).

actions, wherein the fictional message is entered or initiated for administrative purposes for the purpose of bed hiding;

determining, by the queue processor, that the combination of the queued message and the one or more other messages matches one or more of the misleading message patterns so as to indicate or suggest that the message is a misleading message based on the message being at least in part a fictional message entered or initiated for administrative purposes for the purpose of bed hiding; and

removing, by the environmental services management system, upon determining that the queued message matches a pattern so as to indicate or suggest that the message is a misleading message based on the message being at least in part a fictional message, the message from the queue or modifying the message.

Because all of the italicized functions can be performed by a human using a pen and paper, they are like the mental processes in *CyberSource* and *Synopsys*. See *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011) (“All of claim 3’s method steps can be performed in the human mind, or by a human using a pen and paper. . . . Such a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146 (Fed. Cir. 2016) (“[W]e continue to ‘treat[] 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.’” (citation omitted)).

For example, a person can “receiv[e] . . . one or more messages associated with one or more actions to be performed in the hospital” via paper, and “plac[e] . . . the one or more messages in a queue” by drawing a queue on paper. Further, a person can “assess[] . . . a queued message, in

combination with one or more other messages, against one or more misleading message patterns stored . . . , wherein the one or more misleading message patterns comprises two or more messages comprising at least one misleading message, wherein the at least one misleading message is at least in part a fictional message, wherein the fictional message is a message that is initiated or entered into a system by user even though the message is known to not reflect actual conditions or needed actions, wherein the fictional message is entered or initiated for administrative purposes for the purpose of “bed hiding” mentally or by using a pen and paper. Similarly, a person can “determin[e] . . . that the combination of the queued message and the one or more other messages matches one or more of the misleading message patterns so as to indicate or suggest that the message is a misleading message based on the message being at least in part a fictional message entered or initiated for administrative purposes for the purpose of bed hiding” mentally or by using a pen and paper. In addition, a person can “remov[e] . . . upon determining that the queued message matches a pattern so as to indicate or suggest that the message is a misleading message based on the message being at least in part a fictional message, the message from the queue or modifying the message” by crossing off the message from the queue, or modifying the message on paper.

As a result, we conclude claim 44 recites mental processes, and thus an abstract idea. *See* Guidance, Step 2A, Prong 1 (Groupings of Abstract Ideas).

Step 2A, Prong 2 of the Guidance

Turning to Step 2A, Prong 2 of the Guidance, contrary to Appellant’s

assertions (Appeal Br. 12–15; Reply Br. 2–8), claim 44 does not recite additional elements that integrate the judicial exception into a practical application. In particular, Appellant’s argument that “the current claims . . . involve a particularly inventive technical improvement” (Reply Br. 6) is unpersuasive because “a claim for a *new* abstract idea is still an abstract idea.” *Synopsys*, 839 F.3d at 1151. “[U]nder the *Mayo/Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (citations omitted).

Appellant also argues the “current claims involve a highly-specific set of operations that provide a clear technical benefit (*e.g.*, faster processing . . .).” Reply Br. 6.⁵ However, our reviewing court has declared:

While the claimed system and method certainly *purport to accelerate the process of analyzing audit log data, the speed increase comes from the capabilities of a general-purpose computer, rather than the patented method itself. See Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed *more efficiently* via a computer does not materially alter the patent eligibility of the claimed subject matter.”).

FairWarning IP, LLC v. Iatric Sys., Inc., 839 F.3d 1089, 1095 (Fed. Cir. 2016) (emphases added).

⁵ Appellant’s assertions about “less memory utilization, the ability to carry out tasks that were previously unworkable” by the invention (Reply Br. 6) is unsubstantiated and speculative. As discussed above, a person can perform the italicized limitations on paper, which does not utilize any computer memory.

Applying this reasoning to the rejected claims, we similarly find any purported “faster processing” (Reply Br. 6) comes from the capabilities of general-purpose computers (the recited “environmental services management system implemented on one or more computing devices” and “a queue manager of the environmental services management system”), rather than the claimed functions. Similar to the claims of *FairWarning*, claim 44 is “not directed to an improvement in the way computers operate” and “the focus of the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *FairWarning*, 839 F.3d at 1095.

Further, Appellant’s argument (Reply Br. 7–8) about *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) is unpersuasive. In *McRO*, the Court determines:

Claim 1 of the ‘576 patent is focused on *a specific asserted improvement in computer animation*, i.e., the automatic use of rules of a particular type. . . . It is the incorporation of the claimed rules, not the use of the computer, that “improved [the] existing technological process” by allowing the automation of further tasks. . . .

Further, the automation goes beyond merely “organizing [existing] information into a new form” or carrying out a fundamental economic practice. *The claimed process uses a combined order of specific rules that renders information into a specific format that is then used and applied to create desired results: a sequence of synchronized, animated characters.*

McRO, 837 F.3d at 1314–15 (emphasis added) (citations omitted).

This case is different from *McRO* because unlike the claims of *McRO*, claim 44 is not directed to “a specific asserted improvement in computer animation,” let alone “us[ing] a combined order of specific rules that renders information into a specific format that is then used and applied to create

desired results: a sequence of synchronized, animated characters.” *McRO*, 837 F.3d at 1314–15. Contrary to the claims of *McRO* and as discussed above, claim 44 is directed to patent-ineligible mental processes.

Further, Appellant’s arguments about *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) (Appeal Br. 12–14) are unpersuasive. In *DDR Holdings*, the Court found:

the claims at issue here specify how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink. Instead of the computer network operating in its normal, expected manner by sending the website visitor to the third-party website that appears to be connected with the clicked advertisement, the claimed system generates and directs the visitor to the above-described hybrid web page that presents product information from the third-party and visual “look and feel” elements from the host website. When the limitations of the ‘399 patent’s asserted claims are taken together as an ordered combination, the claims recite an invention that is not merely the routine or conventional use of the Internet.

DDR Holdings, 773 F.3d at 1258–59 (emphasis added).

Unlike the claims of *DDR*, claim 44 does not “specify how interactions with the Internet are manipulated to yield . . . a result that overrides the routine and conventional sequence of events” or provide similar technology improvements. *Id.* at 1258. Further, this case is distinguished from *DDR* because claim 44 recites an invention that merely uses computing devices as tools—the opposite of what the claims of *DDR* represent. *See id.* at 1258–59.

As a result, we conclude claim 44 does not recite additional elements that integrate the judicial exception into a practical application. *See* Guidance, Step 2A, Prong 2.

Step 2B of the Guidance

Turning to Step 2B of the Guidance (*Alice* step two), Appellant does not persuasively argue any specific limitation is not well-understood, routine, or conventional in the field. Nor does Appellant persuasively argue the Examiner erred in that aspect. As a result, Appellant has not persuaded us the Examiner erred with respect to the Guidance’s Step 2B analysis. *See* Guidance, Step 2B. In particular, Appellant cites *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) (Appeal Br. 14–15), but does not persuasively explain why that case is similar to the present case. In *BASCOM*, the court determined that at the pleading stage and construed in favor of the nonmovant,

The inventive concept described and claimed . . . is the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server. *BASCOM* explains that the inventive concept rests on taking advantage of the ability of at least some ISPs to identify individual accounts that communicate with the ISP server, and to associate a request for Internet content with a specific individual account.

BASCOM Global Internet Services, 827 F.3d at 1350 (emphasis added).

Unlike the claims of *BASCOM*, claim 44 is not directed to an “installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user” or similar improvements. *Id.* at 1350. Nor does claim 44 “give[] the filtering tool both the benefits of a filter on a local computer and the benefits of a

filter on the ISP server” or provide similar benefits. *Id.* To the contrary and as discussed above, claim 44 is directed to a new abstract idea.

Further, Appellant’s argument about prior art rejection (Appeal Br. 15) is unpersuasive, because prior art rejections are determined under 35 U.S.C. §§ 102–103, which are different statutory requirements. As the Supreme Court emphasizes: “[t]he ‘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) (emphasis added). Our reviewing court further guides that “[e]ligibility and novelty are separate inquiries.” *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017).

As a result, Appellant has not persuaded us the Examiner erred with respect to the Guidance’s Step 2B analysis. *See* Guidance, Step 2B.

Because Appellant has not persuaded us the Examiner erred, we sustain the Examiner’s rejection of claims 44 under 35 U.S.C. § 101.

We also sustain the Examiner’s rejection of claims 46, 47, 49, 50, 53–69, and 84, as Appellant does not advance separate substantive arguments about those claims. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*35 U.S.C. § 103*⁶

We have reviewed the Examiner’s rejection in light of Appellant’s contentions and the evidence of record. We concur with Appellant’s contentions that the Examiner erred in determining the cited portions of

⁶ Appellant raises additional arguments. Because the identified issue is dispositive of the appeal, we do not need to reach the additional arguments.

Shine, Shanahan, Tallman, and Meisel collectively teach “the fictional message is entered or initiated for administrative purposes for the purpose of bed hiding,” as recited in independent claim 44. *See* Appeal Br. 15–21; Reply Br. 8–10.

The Examiner cites Meisel’s paragraphs 1–4 for teaching the disputed claim limitation. *See* Final Act. 11; Ans. 5–6. We have reviewed the cited Meisel portions, and they do not discuss “the fictional message is entered or initiated for administrative purposes for the purpose of bed hiding,” as required by claim 44. Absent further explanation from the Examiner, we do not see how the cited Meisel portions teach the disputed claim limitation.

Further, we disagree with the Examiner’s assertion about intended use (Ans. 9). “It is well settled that the recitation of a new intended use for an old product does not make a claim to that old product patentable.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997) (citations omitted). Claim 44 (and claim 69) is a method—not a product—claim, and Schreiber’s intended-use doctrine is inapplicable here. In any event, the Examiner has not established why the disputed limitation merely constitutes intended use or result, and should not have patentable weight.

In addition, the Examiner asserts the doctrine of non-functional descriptive material (Ans. 5–6), but does not adequately explain why that doctrine applies to the disputed limitation.

Because the Examiner fails to provide sufficient evidence or explanation to support the rejection, we are constrained by the record to reverse the Examiner’s rejection of claim 44.

Each of independent claims 69 and 84 recites a claim limitation that is substantively similar to the disputed limitation of claim 44. *See* Appeal Br.

(Claims App. (claims 69 and 84)). The Examiner applies the same findings and conclusions (discussed above) to both claims 69 and 84. *See* Final Act. 15–18, 22–26. Therefore, for similar reasons, we reverse the Examiner’s rejection of independent claims 69 and 84.

We also reverse the Examiner’s rejection of corresponding dependent claims 46, 47, 49, 50, and 53–68. Although the Examiner cites additional references for rejecting some dependent claims, the Examiner has not shown the additional references overcome the deficiency discussed above in the rejection of claim 44.

CONCLUSION

We affirm the Examiner’s decision rejecting claims 44, 46, 47, 49, 50, 53–69, and 84 under 35 U.S.C. § 101.

We reverse the Examiner’s decision rejecting claims 44, 46, 47, 49, 50, 53–69, and 84 under 35 U.S.C. § 103.

Because we affirm at least one ground of rejection with respect to each claim on appeal, we affirm the Examiner’s decision rejecting claims 44, 46, 47, 49, 50, 53–69, and 84. *See* 37 C.F.R. § 41.50(a)(1).

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
44, 46, 47, 49, 50, 53–69, 84	101	Subject Matter Eligibility	44, 46, 47, 49, 50, 53–69, 84	
44, 46, 47, 49, 50, 53, 54, 57, 64–68, 84	103	Shine, Shanahan, Tallman, Meisel		44, 46, 47, 49, 50, 53, 54, 57, 64–68, 84

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60–63, 69	103	Shine, Shanahan, Tallman, Meisel, Gailloux		60–63, 69
Overall Outcome			44, 46, 47, 49, 50, 53– 69, 84	

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED