

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**PROMPT MEDICAL SYSTEMS, L.P.,**

**Plaintiff,**

**vs.**

**ALLSCRIPTSMYSIS HEALTHCARE  
SOLUTIONS, INC., et al.,**

**Defendants.**

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**CASE NO. 6:10-CV-71**

**MEMORANDUM OPINION AND ORDER**

Before the Court is Defendants'<sup>1</sup> Motion for Summary Judgment on the Basis of Non-Patentable Subject Matter (Docket No. 190). After considering the parties' briefing and arguments, the Court **DENIES** the motion for the reasons stated below.

**BACKGROUND**

Plaintiff, Prompt Medical Systems, L.P. ("Prompt"), filed suit against multiple defendants on March 2, 2010, alleging infringement of U.S. Patent No. 5,483,443 ("the '443 patent"). Prompt then filed suit against Medicomp Systems, Inc. on April 13, 2011, also alleging infringement of the '443 patent. These two cases were consolidated on August 16, 2011, per consent of the parties. *See* Docket No. 360. The Court recently issued its claim construction for the disputed terms of the '443 patent. *See* Docket No. 387.

The '443 patent is directed to a method for computing Current Procedural Technology ("CPT") codes from physician-generated documentation. CPT codes are a system of codes developed by the American Medical Association ("AMA") in conjunction with the Health Care

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<sup>1</sup> Filing defendants include: Community Computer Service, Inc.; Dr. Oates Computer Systems, Inc.; Integrated Systems Management, Inc.; Medflow, Inc.; Noteworthy Medical Systems, Inc.; Pulse Systems, Inc.; and Visionary Medical Systems, Inc. Integrated Systems Management, Inc. has since been dismissed from the case. *See* Docket No. 341.

Financing Administration. They provide a uniform language to describe a physician's work, which facilitates patient billing for medical and surgical procedures, diagnostic tests, laboratory studies, and other medical services rendered. Evaluation and management ("E/M") codes are a subset of CPT codes "used to describe the level of care (work) a physician renders to a patient." '443 Patent col. 1:40–42. E/M services are broken down into three key components, which correspond generally to aspects of a physician–patient encounter: patient history, examination, and medical diagnosis.

The invention allows a CPT code to be calculated based on the documentation process that occurs during the physician–patient encounter. During the encounter, the computer prompts the physician with lists from which the physician chooses particular descriptions that best characterize the patient's status. When the physician enters his or her choices, the computer compares the selected choices to criteria for determining the component codes and ultimately the final CPT code.

### **APPLICABLE LAW**

The Court renders summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986); *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998).

Section 101 of the Patent Act defines the four broad categories of patentable subject matter: "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 (2006). "In choosing such expansive terms . . . modified by the comprehensive 'any,' Congress plainly contemplated

that the patent laws would be given wide scope.” *Bilski v. Kappos*, 130 S. Ct. 3218, 3225 (2010) (“*Bilski II*”) (quoting *Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980)). “Process,” the statutory category at issue in this case, is defined by the Patent Act: “The term ‘process’ means process, art, or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.” 35 U.S.C. § 100(b) (2006).

The Supreme Court has recognized three exceptions to the broad domain of patentable subject matter encompassed by § 101: “laws of nature, physical phenomena, and abstract ideas.” *Chakrabarty*, 447 U.S. at 309; *see also Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) (“Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.”). Laws of nature and physical phenomena are not patentable subject matter “because those categories embrace ‘the basic tools of scientific and technological work.’” *Research Corp. Techs., Inc. v. Microsoft Corp.*, 627 F.3d 859, 867–68 (Fed. Cir. 2010) (quoting *Benson*, 409 U.S. at 67). Though laws of nature and mathematical formulae are not patentable, the application of such laws and formulae may fall within the bounds of § 101. *Diamond v. Diehr*, 450 U.S. 175, 187 (1981). “Abstractness, also a disclosure problem addressed in the Patent Act in *section 112*, also places subject matter outside the statutory categories.” *Research Corp.*, 627 F.3d at 868. An abstract idea “should exhibit itself so manifestly as to override the broad statutory categories of eligible subject matter and the statutory context that directs primary attention on the patentability criteria of the rest of the Patent Act.” *Id.* “[I]nventions with specific applications or improvements to technologies in the marketplace are not likely to be so abstract that they override the statutory language and framework of the Patent Act.” *Id.* at 869.

“[T]he machine-or-transformation test is a useful and important clue . . . for determining whether some claimed inventions are processes under § 101.” *Bilski II*, 130 S. Ct. at 3227. However, it is “not the sole test for deciding whether an invention is a patent-eligible ‘process.’” *Id.* The machine-or-transformation inquiry, while often insightful with mechanical inventions, “has far less application to the inventions of the Information Age.” *Ultramercial, LLC v. Hulu, LLC*, 657 F.3d 1323, 1327 (Fed. Cir. 2011). The *Bilski* Court, by rejecting the machine-or-transformation test as “the sole test for deciding whether an invention is a patent-eligible process,” reiterated that the three Court-recognized exceptions are the *only* limits placed on the four broad categories of patentable subject matter enumerated in § 101. *See Bilski II*, 130 S. Ct. at 3225 (“[T]hese [three] exceptions have defined the reach of the statute as a matter of statutory *stare decisis* going back 150 years.”). Under the machine-or-transformation test, a process claim is patent-eligible if it “is tied to a particular machine . . . [or] transforms an article.” *In re Bilski*, 545 F.3d 943, 961 (Fed. Cir. 2008) (“*Bilski I*”) (citing *Benson*, 409 U.S. at 70), *aff’d sub nom. Bilski II*, 130 S. Ct. 3218 (2010). The machine or transformation “must impose meaningful limits on the claim’s scope . . . .” *Id.* Additionally, “the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity.” *Id.* at 962.

Whether an invention is patent-eligible under § 101 is merely a threshold question; the invention must also satisfy the other requirements of the Patent Act. *Bilski II*, 130 S. Ct. at 3225. “Those requirements include that the invention be novel, *see* § 102, nonobvious, *see* § 103, and fully and particularly described, *see* § 112.” *Id.* “The ‘course eligibility filter’ of § 101 should not be used to invalidate patents based on concerns about vagueness, indefinite disclosure, or lack of enablement, as these infirmities are expressly addressed by § 112.” *Ultramercial*, 657 F.3d at

1329. Patent-eligibility under § 101 is a question of law. *Bilski I*, 545 F.3d at 951. Claim construction, though not always necessary, is often an important first step in the § 101 analysis. *Id.* In determining whether a claim is drawn to patentable subject matter, the court shall consider the claim as a whole rather than dissecting and evaluating its individual elements. *Diehr*, 450 U.S. at 188.

### ANALYSIS

Defendants contend that all claims of the '443 patent are invalid under 35 U.S.C. § 101 because they do not satisfy the machine-or-transformation test and otherwise disclose an abstract idea. The '443 patent has two independent claims and thirteen dependent claims, all drawn to processes. Independent claims 1 and 5 are representative and sufficient for the § 101 analysis. They read:

**Claim 1.** A process for generation of Current Procedural Terminology ("CPT") codes comprising:

- storing historical data in a memory;
- comparing the historical data to a set of historical criteria to define a history code;
- storing an examination data in a memory;
- comparing the examination data to a set of examination criteria to define an examination code;
- storing medical decision making data in a memory;
- comparing the medical decision making data to a set of medical decision making criteria to define a medical decision making code;
- comparing the historical code, the examination code, and the medical decision making code to a set of final criteria to define a final CPT code; and
- displaying the final CPT code.

**Claim 5.** A process for computing Current Procedural Terminology ("CPT") codes from documentation generated by a medical professional, said process comprising:

- displaying a set of queries to the medical professional;
- receiving input from the medical professional in response to said queries;
- computing a component historical code based on said input and a set of stored historical criteria;
- computing a component examination code based on said input and a set of stored examination criteria;
- computing a component medical decision code based on said input and a set of stored medical decision criteria;
- computing a final CPT code based on said historical code, said examination code and said medical decision code and a set of stored patient encounter criteria.

All of the claims involve a process for determining CPT codes based on information gathered during a physician–patient encounter.

### ***Machine-or-Transformation Test***

Both parties spend considerable time arguing whether the claims-at-issue satisfy the Federal Circuit’s machine-or-transformation test. However, the Supreme Court has clarified that this test “is not the sole test for deciding whether an invention is a patent-eligible ‘process.’” *Bilski II*, 130 S. Ct. at 3227. Rather, the test is “a useful and important clue . . . for determining whether *some* claimed inventions are [patent-eligible] processes . . . .” *Id.* (emphasis added). The Federal Circuit and a plurality of the Supreme Court have recognized that the machine-or-transformation test, though particularly useful for evaluating the patentability of Industrial Age technology, may be less appropriate for evaluating technologies rooted in the Information Age. *See Ultramercial*, 657 F.3d at 1327 (“While machine-or-transformation logic served well as a tool to evaluate the subject matter of Industrial Age processes, that test has far less application to

the inventions of the Information Age.”); *Bilski II*, 130 S. Ct. at 3227 (plurality opinion) (“[T]here are reasons to doubt whether the test should be the sole criterion for determining the patentability of inventions in the Information Age.”). Thus, the Court analyzes the patent under the machine-or-transformation test, but that does not end the inquiry.

### *Machine Prong*

Defendants argue that the ‘443 patent is not tied to a particular machine because it merely requires a general purpose computer. Claim 1 implies the use of a computer because it requires the historical data, examination data, and medical decision making data to be stored in “a memory.” ‘443 Patent col. 19:65–20:34. Claim 5, a “process for computing [CPT] codes,” also involves the use of a general purpose computer; the Court has construed the computing limitations within this claim to entail “using a computer during the patient encounter.” Docket No. 387, at 16–17. Defendants note that the claims do not recite a specific algorithm for calculating CPT codes; thus, Defendants contend, “no specific machine is utilized by the ‘443 Patent.” Docket No. 190, at 8.

Prompt responds, essentially, that requiring a computer to perform the method claims is sufficient to satisfy the machine prong of the machine-or-transformation test. However, case law—even that cited by Prompt—does not bear this out. For instance, Prompt relies on *SiRF Technology, Inc. v. ITC*, 601 F.3d 1319 (Fed. Cir. 2010), to support its argument that the requirement of a general purpose computer to perform method claims satisfies the machine prong. The claims in *SiRF Technology* involved a GPS receiver, which is a specialized machine that provides a limited range of functionality. A general purpose computer, on the other hand, is designed to provide generic computing functionality and does not impose meaningful limits on a claim’s scope. *See SiRF*, 601 F.3d at 1333 (noting that using a computer “for performing calculations” does not impose a meaningful limit on the scope of a claim). Likewise, *Research*

*Corp.* fails to substantially support Prompt’s argument. In *Research Corp.*, the court noted that the claims required “high contrast film, a film printer, a memory, and printer and display devices.” *Research Corp.*, 627 F.3d at 869 (internal quotation marks omitted). However, the court did not hold that the use of these devices satisfied the machine prong; in fact, the court did not perform a machine-or-transformation test analysis. Rather, the court merely stated that the requirement of these devices to satisfy the claims “confirm this court’s holding that the invention is not abstract.” *Id.*

The ‘443 patent claims require the use of a general purpose computer; however, this alone does not satisfy the machine prong of the machine-or-transformation test because it fails to impose a meaningful limitation on the claim scope. *See Bilski I*, 545 F.3d at 961 (“[T]he use of a specific machine . . . must impose meaningful limits on the claim’s scope to impart patent-eligibility.” (citing *Benson*, 409 U.S. at 71–72)). To hold otherwise would dictate that all software-based claims satisfy the machine-or-transformation test. This is not the law. *See Benson*, 409 U.S. at 65, 73 (finding a method to be performed on a computer for converting binary coded decimals into pure binary form to be patent-ineligible). The Federal Circuit recently explained that requiring a computer for computation and data storage in a method claim did not impose a meaningful limitation on patent claims. *See Fuzzysharp Techs. Inc. v. 3DLabs Inc.*, 2011 U.S. App. LEXIS 22274, at \*8–9 (Fed. Cir. Nov. 4, 2011). Thus, requiring a computer for generic tasks such as computation and data storage is insufficient to satisfy the machine prong of the machine-or-transformation test.

The ‘443 patent claims require the use of a general purpose computer for computation, storage, and display; these generic functions do not impose meaningful limits on the claims.



Accordingly, the ‘443 patent claims do not satisfy the machine prong of the machine-or-transformation test.

### *Transformation Prong*

Defendants cursorily assert that the ‘443 patent claims do not meet the transformation prong of the machine-or-transformation test because “[s]toring information does not constitute transforming.” Docket No. 190, at 8. Prompt responds that the claims do effect a transformation because “[e]ach active step of the claimed process manipulates or changes the state of a memory.” Docket No. 199, at 18. Defendants are correct that mere data storage does not result in a meaningful transformation. However, as argued by Prompt, the claims-at-issue involve more than mere storage of data. Data is gathered and then compared to certain criteria, which guides the underlying algorithm in determining a final CPT code.

Prompt argues that the instant case is analogous to *Abstrax, Inc. v. Dell, Inc.*, 2009 U.S. Dist. LEXIS 93605 (E.D. Tex. Oct. 7, 2009), which involved a method for generating assembly instructions for a requested physical product based on a configuration model of that product. The court found that the claimed method effected a transformation because the configuration model “represents physical and tangible objects and their respective structures.” *Abstrax*, 2009 U.S. Dist. LEXIS, at \*11. This raw data is then “transformed into assembly instructions for assembling the product.” *Id.* The method in *Abstrax* was patentable subject matter because it involved transforming raw data into a form that could be physically rendered as a product. The Federal Circuit has explained that the transformation of raw data into a form that represents

physical and tangible objects is a patent-eligible transformation of articles. *See Bilski I*, 545 F.3d at 962–63 (interpreting *In re Abele*, 684 F.2d 902 (CCPA 1982)).<sup>2</sup>

Here, unlike *Abstrax* and *Abele*, the claims do not involve the transformation of raw data into data that represents physical and tangible objects. Rather, the ‘443 patent involves claims for manipulating data gathered in a physician–patient encounter and generating a final CPT code for that encounter. Final CPT codes are not physical and tangible objects; they are a system of standardized numeric codes used to uniformly categorize physician–patient encounters. Thus, the ‘443 patent method claims do not satisfy the transformation prong of the machine-or-transformation test.

### ***Abstract Idea Exception to Patentability***

The fact that the ‘443 patent claims do not pass the machine-or-transformation test does not render them patent-ineligible. *See Bilski II*, 130 S. Ct. at 3227. Rather, for the type of claims at issue—method claims involving Information Age technology—a pertinent question is whether the claims are drawn to an abstract idea. *See Ultramercial*, 657 F.3d at 1326–27; *Bilski II*, 130 S. Ct. at 3227–28 (plurality opinion). Controlling precedent offers scant guidance beyond the machine-or-transformation test on what defines the contours of an abstract idea for patent-eligibility inquiries. However, the Federal Circuit has opined that the “disqualifying [abstract] characteristic should exhibit itself so manifestly as to override the broad statutory categories of eligible subject matter and the statutory context that directs primary attention on the patentability criteria of the rest of the Patent Act.” *Research Corp.*, 627 F.3d at 868. In evaluating whether claims are drawn to an abstract idea, it is important to remember the underpinnings and purpose of the machine-or-transformation test. The machine-or-transformation test seeks to determine

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<sup>2</sup> *Abele* involved a claim for displaying X-ray attenuation data. The raw data was gathered during the X-ray process and then processed by an algorithm; the processed data was then displayed on a screen, depicting tangible objects such as bones and organs.

whether the scope of claims are sufficiently limited so that they do not exclude others from what is rightfully available to all of mankind in its inventive inquiries. The Court proceeds with this guidance in mind.

### *Parties' Arguments*

Prompt responds to Defendants' abstract idea arguments by explaining that the claims are not for abstract ideas because they involve the use of a general purpose computer. Docket No. 199, at 7. Prompt further argues that the claims are appropriately limited because they "are computer-implemented, require specific hardware implemented physical components, and involve specific algorithms." Docket No. 225, at 5. Prompt's arguments regarding abstractness are essentially that the claims involve the use of a specific machine and thus satisfy the machine prong of the machine-or-transformation test. For the reasons stated earlier, these arguments are unavailing.

Defendants argue that the claims-at-issue are for the abstract idea that "input from a medical provider can be used to generate a reimbursement code." Docket No. 190, at 9. Defendants describe the claimed process as inputting information, comparing information, and displaying the result of the compared information. This reading of the claims is too generic and only highlights the verbs for each step of the claimed method. Additionally, Defendants' high-level reading of the claims ignores important limitations present in the claims.

An overarching limitation is that these claims are for computing and generating final CPT codes, which are a system of codes developed by the AMA in conjunction with the Health Care Financing Administration. The '443 patent mentions other coding systems, such as the International Classification of Diseases 9th edition Clinical Modification (ICD9) codes developed by the World Health Organization. *See* '443 Patent col. 1:47–52. However, the claims are drawn specifically to the generation and computation of CPT codes. Additionally, the claims

cover a certain method for computing CPT codes. Rather than covering *any* method of computing CPT codes, the claims-at-issue cover a method of computing CPT codes that entails gathering three categories of information—historical data, examination data, and medical decision making data—and comparing this information to established criteria for determining a component code for each category. These component codes are then compared to determine the final CPT code. When the claims are considered as a whole, they are not to a general process of gathering input, computing, and displaying information. Rather, they are to methods for computing a specific type of medical code to describe a physician–patient encounter using three component codes derived from information gathered during the encounter.

Defendants also argue that the claims are abstract because they do not recite specific algorithms for computing final CPT codes. However, this level of specificity is not required in the claims, particularly from a patent-eligibility standpoint. *See Ultramercial*, 657 F.3d at 1329. In *Ultramercial*, the court noted that the broadly claimed method did not detail “a particular mechanism for delivering media content to the consumer.” *Id.* The court explained:

This breadth and lack of specificity does not render the claimed subject matter impermissibly abstract. Assuming the patent provides sufficient disclosure to enable a person of ordinary skill in the art to practice the invention and to satisfy the written description requirement, the disclosure need not detail the particular instrumentalities for each step in the process.

*Id.* Likewise, the patentability of the instant claims does not turn on the presence or absence of a detailed algorithm for computing the CPT codes.<sup>3</sup> While absence of such detail may present an issue regarding other requirements of the Patent Act, it does not render the claims ineligible for patentability.

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<sup>3</sup> The CPT codes and their criteria are updated periodically by the American Medical Association. Thus, the underlying algorithms for computing these codes based on the gathered information would likely require periodic updates also to address any changes made by the AMA.

Finally, Defendants argue that limiting the applicability of the general process claimed to the computation of CPT codes fails to render the abstract claims patentable, noting that a similar field-of-use limitation was rejected by the Supreme Court in *Flook*. In *Flook*, the Court held that claiming a conventional, post-solution application of an otherwise unpatentable algorithm is insufficient to render the claim patentable. *Flook*, 437 U.S. at 590. The claims in *Flook* involved a process for updating alarm limits during a catalytic conversion process; the process entailed gathering current temperature values, using an algorithm to calculate an updated alarm limit value based on these temperatures, and adjusting the alarm limit to the newly calculated value. *Id.* at 585. The Court agreed that the claims were drawn to a limited field-of-use; however, the Court noted that even the limited field of catalytic conversion processes encompassed a wide array of potential processes. *Id.* at 586. Additionally, the respondent conceded that the algorithm for computing the alarm limit was the only novel feature of the claimed method. *Id.* at 588. Thus, the process of gathering temperature data, calculating an alarm limit, and updating the alarm limit was already known in the art. The *Flook* claimants merely devised a *better* algorithm for calculating the alarm limit. Thus, the Court determined that the method was not patent-eligible because “a claim for an improved method of calculation, even when tied to a specific end use, is unpatentable subject matter under § 101.” *Id.* at 595 n.18.

The ‘443 patent method claims are not for an “improved method of calculation,” as in *Flook*. Prior solutions for determining CPT codes often involved combing through books detailing the CPT codes and their criteria, referring to summary cards, and reviewing notes taken during the physician–patient encounter. *See* ‘443 Patent col. 1:54–2:34 (discussing prior solutions for medical coding). Additionally, prior solutions typically required the CPT code to be determined after the physician–patient encounter was complete. Prompt’s improvements are for

more than an improved algorithm. They include determination of a code during the physician–patient encounter and eliminate the need for coders to pore over books, summary cards, and notes to determine a CPT code after the physician–patient encounter is complete. Additionally, Prompt has not designated a mathematical algorithm as its point of novelty in the method claims. The ‘443 patent specification identifies several points of novelty in the instant claims. First, the invention incorporates the coding process, typically done after the physician–patient encounter, into the actual documentation process that occurs during the physician–patient encounter. ‘443 Patent col. 2:60–63. Second, the invention provides for more consistent and more accurate coding. *Id.* col. 2:64–3:19. Finally, the invention permits the physician to dedicate more time during the physician–patient encounter to the patient rather than tedious documentation procedures to facilitate post-encounter coding. *Id.* col. 3:29–32. Thus, Defendants’ argument that the instant invention is patent ineligible under *Flook* is unconvincing.

#### *Post-briefing Developments*

Since briefing, the Federal Circuit has released two opinions that shed more light on the post-*Bilski* § 101 analysis for method claims drawn to Information Age technology. *See Ultramercial, LLC v. Hulu, LLC*, 657 F.3d 1323 (Fed. Cir. 2011); *Cybersource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011). In *Cybersource*, the court found the claims at issue were unpatentable because they were drawn to purely mental processes, a subcategory of abstract ideas. In *Ultramercial*, the court reversed the district court’s finding that the claims were drawn to abstract ideas. Both cases involved claims drawn to Information Age processes; neither holding turned on satisfaction of the machine-or-transformation test; and each case evaluated whether the claim at issue was drawn to an abstract idea.

*Cybersource* involved a method for detecting fraudulent credit card transactions conducted over the Internet. *Cybersource*, 654 F.3d at 1367. The method entailed gathering

information about credit card transactions that have utilized a certain Internet address, creating a map of credit card numbers that used the address, and using the map to determine if the instant transaction is valid. *Id.* at 1370 (quoting U.S. Patent No. 6,029,154 Reexamination Certificate). The court first agreed with the district court that the claim did not satisfy the machine-or-transformation test. *Id.* at 1371. It then held that the claim “fails to recite patent-eligible subject matter because it is drawn to an unpatentable mental process—a subcategory of unpatentable abstract ideas.” *Id.* In analyzing the claim, the court noted that the first step is mere data gathering, the second step is as simple as listing the data gathered in the first step, and the final step “is so broadly worded that it encompasses literally any method for detecting fraud based on the gathered transaction and Internet address data.” *Id.* at 1372–73. In essence, the claim was drawn to any process for detecting fraudulent credit card transactions conducted over the Internet that relied on data about transactions originating from an Internet address. The court explained that the claim was so broad as to encompass “even logical reasoning that can be performed entirely in the human mind.” *Id.* at 1373. Accordingly, the claim was drawn to an abstract idea and thus unpatentable.

*Ultramercial* involved a method for distributing copyrighted information over the Internet to consumers for free so long as the consumer views an advertisement. *Ultramercial*, 657 F.3d at 1324. The advertiser ultimately pays for the copyrighted material that is distributed to the consumer. *Id.* In lieu of a machine-or-transformation analysis, the court evaluated whether the claims were drawn to abstract ideas. The court agreed that “the mere idea that advertising can be used as a form of currency is abstract”; however, the court held the claims were not so broad for several reasons. *Id.* at 1328. First, many steps of the claims “are likely to require intricate and complex computer programming.” *Id.* Second, the claimed invention does not involve a series of

“purely mental steps.” *Id.* at 1329. Rather, the invention is “a practical application of the general concept of advertising as currency and an improvement to prior art technology . . . and is not ‘so manifestly abstract as to override the statutory language of section 101.’” *Id.* at 1330 (quoting *Research Corp.*, 627 F.3d at 869). Accordingly, the Court held that the claims were “a practical application of the general concept of advertising as currency and improvement to the prior art technology”. *Id.* Thus, the claims were drawn to patentable subject matter.

*Cybersource* and *Ultramercial* further support that the ‘443 patent claims are drawn to patent-eligible subject matter. Like those in *Ultramercial*, the ‘443 patent claims are likely implemented with complex computer programming. *See* Docket No. 199, at 11 (noting that 822 pages were submitted to the PTO detailing Prompt’s programming efforts regarding the invention); Docket No. 199 Attach. 3 (excerpt of the submitted material showing computer code). Unlike the claims in *Cybersource*, the instant claims are not drawn to mental processes. Claim 1 involves storing information about the physician–patient encounter in a memory. Claims 2, 3 and 4, which depend from claim 1, involve a CRT screen, printer, and inter-program communication respectively. It is clear that these claims entail the use of a general purpose computer and cannot be performed solely as a mental process. Claim 5 is not drawn to a mental process because it requires displaying queries to and receiving input from a physician. Thus, the ‘443 patent claims are not so broad as to encompass “logical reasoning that can be performed entirely in the human mind.” *Cybersource*, at 1373.

The ‘443 patent claims are not drawn to an abstract idea. They involve the use of a computer and complex programming and are not drawn to purely mental processes. Prior attempts to solve the coding problems addressed by the ‘443 patent entailed hiring full-time coders who pored over medical records and tomes of information about CPT code criteria to



determine the appropriate code. The ‘443 claims provide a patentable improvement to the previous methods for determining the CPT codes for a physician–patient encounter. *See Research Corp.*, 627 F.3d at 869 (“[T]his court notes that inventions with specific applications or improvements to technologies in the marketplace are not likely to be so abstract that they override the statutory language and framework of the Patent Act.”). The claims are also subject to meaningful limits. They relate specifically to a physician–patient encounter and involve the determination of a specific type of medical procedure code that is published by the AMA. Though the claims do not satisfy the machine-or-transformation test, they are still subject to meaningful limitations of their scope. Accordingly, the ‘443 patent claims are not drawn to an abstract idea. They survive the § 101 threshold inquiry and are for patentable-subject matter.

#### **CONCLUSION**

For the reasons stated herein, the Court **DENIES** Defendants’ Motion for Summary Judgment on the Basis of Non-Patentable Subject Matter (Docket No. 190).

**So ORDERED and SIGNED this 13th day of February, 2012.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**