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ZARLEY LAW FIRM P.L.C.
CAPITAL SQUARE
400 LOCUST, SUITE 200
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUDD G. BUTLER and PAMELA J. FLECKENSTEIN

Appeal 2016-006025
Application 13/073,026[1]
Technology Center 1600

Before JEFFREY N. FREDMAN, RICHARD J. SMITH, and RYAN H. FLAX, *Administrative Patent Judges*.

FLAX, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) involving claims directed to a glucose management device and managing patient data. Claims 1, 2, 6–9, 12, 13, 15, 16, 18–20, and 22–24 are on appeal as rejected under 35 U.S.C. §§ 101 and 103(a). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] No Real Party in Interest different than the named inventors is identified by Appellants. App. Br. i.

STATEMENT OF THE CASE

The appealed claims can be found in the Claims Appendix of the Appeal Brief. Claims 1, 9, and 19 are the independent claims. Claim 1 reads as follows:

> 1. A glucose management device comprising:
>
> a housing have [*sic*] an input device that receives an in vitro test element;
>
> glucose measurement circuitry electrically connected to the in vitro test element;
>
> a processor in communication with the glucose measurement circuitry to receive glucose level data provided by the in vitro test element;
>
> a first database to store user information and glucose level data;
>
> a first outlet port in communication with the first database to download only user information and glucose level data on the first database;
>
> a second database to store glucose level data only;
>
> a second outlet port in communication with the second database to download only glucose level data on the second database; and
>
> wherein the processor prompts a user to input user information into the input device after the processor receives the glucose level data provided by the in vitro test element and the user has the option to accept, deny, or delay a prompt for information.

App. Br. 9 (Claims Appendix). Claim 9 reads as follows:

> 9. A method of managing glucose steps comprising:
>
> determining a glucose level of a user with an in vitro test element;
>
> communicating the glucose level of the user to a processor;
>
> recording the glucose level of the user in a first database;

prompting the user with the processor to input user information into an input device;

prompting the user to accept, deny, or delay the prompt for information;

inputting user information into the input device;

recording the user information in the first database of the processor;

requesting a glucose level report by the user;

creating the glucose level report; and

storing the glucose level report in the second database.

Id. 9–10. Claim 19 reads as follows:

19. A method of managing glucose steps comprising:

determining a glucose level of a user with an in vitro test element;

communicating the glucose level of the user to a processor;

recording the glucose level in a first database of the processor;

requesting a report of glucose measurements; and

generating the report of glucose measurements with the processor;

and storing the report in a second database.

Id. at 10.

The following rejections are on appeal:[2]

A. Claims 1, 2, 6–9, 12, 13, 15, 16, 18–20, and 22–24 under 35 U.S.C. § 101 as directed to patent ineligible subject matter. Final Action 2.

B. Claims 1, 2, 7–9, 12, 13, 15, 16, and 18–20, and 22–24 under 35 U.S.C. § 103(a) over Galley,[3] Soni,[4] and Sabo.[5] Final Action 7.

C. Claim 6 under 35 U.S.C. § 103(a) over Galley, Soni, Sabo, and Brister.[6] Final Action 9.

DISCUSSION

A. The rejection of claims 1, 2, 6–9, 12, 13, 15, 16, 18–20, and 22–24 under 35 U.S.C. § 101.

The Examiner determined that all pending/appealed claims are directed to the abstract idea of manipulating data, e.g., requesting, recording, and creating data, and fail to recite significantly more so as to make the claims patent-eligible. Final Action 2–4. We agree with respect to claims 9 and 19, and disagree with respect to claim 1.

---

[2] Claims 3–5, 10, 11, 14, 17, and 21 were cancelled by Appellants during prosecution. *See* Office Action Response dated Mar. 27, 2015. Therefore, regardless of the listings in the Examiner's rejection or Appellants' briefing, we omit these cancelled claims from our listings here.

[3] U.S. Patent US 8,118,770 B2 to Galley et al. (issued Feb. 21, 2012) (hereinafter "Galley").

[4] U.S. Patent Application Pub. No. US 2010/0218132 A1 (published Aug. 26, 2010) (hereinafter "Soni").

[5] U.S. Patent Application Pub. No. US 2012/0095314 A1 (published Apr. 19, 2012) (hereinafter "Sabo").

[6] U.S. Patent US 7,857,760 B2 to Brister et al. (issued Dec. 28, 2010) (hereinafter "Brister").

The Supreme Court instructs us to "first determine whether the claims at issue are directed to a patent-ineligible concept." *Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). If this threshold is met, we move to the second step of the inquiry and "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." *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1298, 1297 (2012)).

Taking up the first step of the patent-eligibility analysis, we find claim 1 is not necessarily directed to an abstract idea because it recites a glucose management device having two outlet ports and dedicates one of the ports to glucose level data. Looking to the Specification to enlighten us as to the claimed invention here, as did the Federal Circuit in *Enfish, LLC v. Microsoft Corp.*, --- F.3d --- , 2016 WL 2756255 (Fed. Cir. May 12, 2016), we find it explains as follows:

> Medicare requires pharmacies to retrieve a log from users each time the strips are refilled. Because only a log of use of test strips is needed, and considering HIPPA regulations, the user could request a report be generated by the processor of only glucose measurements. Alternatively, this information could be saved in a separate database that is accessed through the output port 18 or a second output port 30 if needed. The report would be downloaded to the pharmacy's database and supplied to Medicare on request to show compliance with regulations and reduce or eliminate fraud.

Spec. 4, ll. 12–22. The Specification informs us that the inclusion of a separate data output port dedicated to glucose measurements is a professed improvement in glucose management device technology because it allows

the device to communicate with, e.g., pharmacies or Medicare, to supply information showing Medicare regulatory compliance in relation to using the device for blood glucose measurement while withholding private and irrelevant patient information. According to the Specification, this information exchange goes hand-in-hand with patients' use of glucose meter devices. *Id.* Therefore, as in *Enfish*, here the focus of claim 1 is on an improvement to a device's functionality (or usefulness) itself and not on other tasks for which the device is invoked merely as a tool or platform. *Enfish*, 2016 WL 2756255 at *5.

For the above reasons, we find claim 1 is not directed to abstract, patent-ineligible subject matter and the respective rejection should be reversed.

Turning to claims 9 and 19, which are method claims, under the first *Alice* step we find they are directed to the abstract idea of information management. Similar to the facts of *In re TLI Comm. LLC*, --- F.3d ---, 2016 WL 2865693 *3–5 (Fed. Cir. May 17, 2016), the methods of these claims are not directed to an improvement in computer or glucose meter device technology, but simply to recording, requesting, and reporting information, i.e., organizing data, using the tangible components of such technologies only in their generic ways. Other than determining a glucose level and implicating a computer processor, which the Specification indicates were well known, the recited steps could be performed in the mind of a person or on paper. *See* Spec. 1, ll. 14–20; *see also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011) ("method steps [that] can be

performed in the human mind, or by a human using a pen and paper" are abstract and unpatentable).

Turning to the second step under *Alice*, the implication of any technology in claims 9 and 19 is only in line with the well-known, routine functionality of the technology, e.g., processors function to process data, input devices function to enable users to interface with the device, databases file information, and communication ports connect devices; nothing significantly more is added. Thus, as did the Federal Circuit in *In re TLI Comm. LLC*, we find that the steps recited by these claims, individually and as a combined whole, cannot confer patent eligibility. *In re TLI Comm. LLC*, 2016 WL 2865693 *7; *see also SmartGene, Inc. v. Advanced Bio. Labs SA*, 555 Fed. App'x 950, 955–56 (Fed. Cir. 2014) (claims drawn to organizing patient information and analyzing it as a doctor would were directed to an abstract idea and requiring a computer to do this was not enough to convey patent eligibility).

For the above reasons, we find that claims 9 and 19 are directed to abstract, patent-ineligible subject matter without significantly more to bring the abstract idea into the realm of patent-eligibility and the respective rejection must be affirmed.

B. The rejection of claims 1, 2, 7-9, 12, 13, 15, 16, 18–20, and 22–24 under 35 U.S.C. § 103(a) over Galley, Soni, and Sabo.

With regard to the obviousness rejection(s), we adopt the Examiner's findings of fact and reasoning regarding the scope and content of the prior

art (*see* Final Action 7–9; Ans. 7–9, 13–15) and rely thereon in affirming the final rejection. For emphasis only, we highlight the following:

FINDINGS OF FACT

FF1. Galley disclosed "[a]n electronic device may be configured to prompt a user via an on-board display to measure user glucose via an on-board glucose meter . . . and prompt the user via the display to enter carbohydrate information into the device." Galley Abstract; *see also* Final Action 7 (discussing Galley).

FF2. Galley disclosed:

> The electronic device **12** further includes a carrier port **20** that extends into the housing from an opening defined therein. The carrier port **20** is sized to receive therein a sample carrier or strip **22** upon which a liquid sample containing an analyte has been or will be deposited. The electronic device **12** includes electrical circuitry that analyzes the liquid sample deposited on the sample carrier **22**, when the sample carrier **22** is received within the carrier port **20**, to determine a concentration of the analyte contained in the liquid sample. In one embodiment, the liquid sample is blood and the analyte is glucose. In this embodiment, the sample carrier **22** may [*sic*] is illustratively provided in the form of a glucose test strip, and the electrical circuitry of the electronic device **12** includes conventional circuitry that measures the concentration of glucose in a blood sample deposited on the test strip **22**.

Galley col. 5, l. 61 to col. 6, l. 8; *see also* Final Action 7 (discussing Galley).

FF3. Galley disclosed Fig. 1, reproduced below:

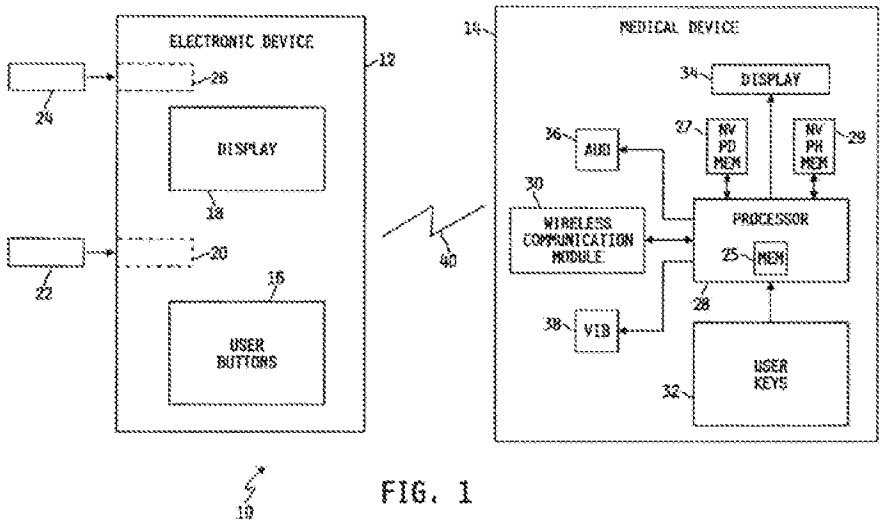

FIG. 1

Galley Fig. 1. "FIG. **1** shows a block diagram of . . . a wireless communication system including a medical device and a remote electronic device that are both configured to wirelessly communicate with each other." Galley col. 3, ll. 53–55; *see also* Final Action 7 (discussing Galley Fig. 1). Galley Fig. 1 shows the glucose-measuring medical device includes a "display" labeled "34" and "user keys" labeled "32." Galley Fig. 1; *see also* Final Action 7 (discussing Galley Fig. 1). Galley Fig. 1 shows a "wireless communication module" (or circuit) labeled "30," which communicates data (labeled "40") between the glucose-measuring medical device and remote devices. Galley Fig. 1; col. 7, ll. 4–8; *see also* Final Action 7 (discussing Galley Fig. 1).

FF4. Galley disclosed Fig. 2, reproduced below:

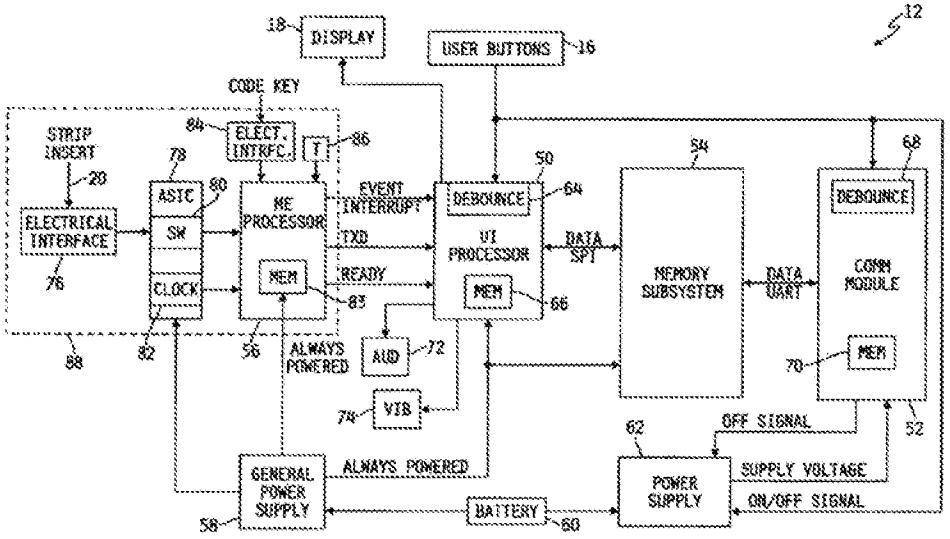

FIG. 2

Galley Fig. 2. "FIG. **2** shows a block diagram schematic of . . . an electronic circuit that is carried by, and that controls, the remote electronic device of FIG. **1**." Galley col. 3, ll. 56–58; *see also* Final Action 7 (discussing Galley Fig. 2). Galley Fig. 2 shows a "comm[unication] module" (or circuit) labeled "52" connected to the device "memory subsystem" labeled "54" and thereby to a "UI processor" labeled "50" and an "ME processor" labeled "56" and thereby to an "electrical interface" labeled "76," which is associated with the blood glucose strip insert element, labeled "20." Galley Fig. 2; *see also* Final Action 7 (discussing Galley).

FF5. With regard to Fig. 2, Galley explained:

> the wireless communication circuit **52** is provided in the form of a conventional BlueTooth® telemetry module that includes a conventional processor and a memory unit **70**, and that further includes conventional wireless communication hardware such as a suitable antenna. The memory unit **70** illustratively has stored

> therein instructions that are executable by the processor of the wireless communication circuit **52** to exclusively control of all wireless communications with external devices . . . .

Galley col. 8, ll. 38–47; *see also* Final Action 7 (discussing Galley Fig. 2).

FF6. Galley disclosed Fig. 10B, reproduced below:

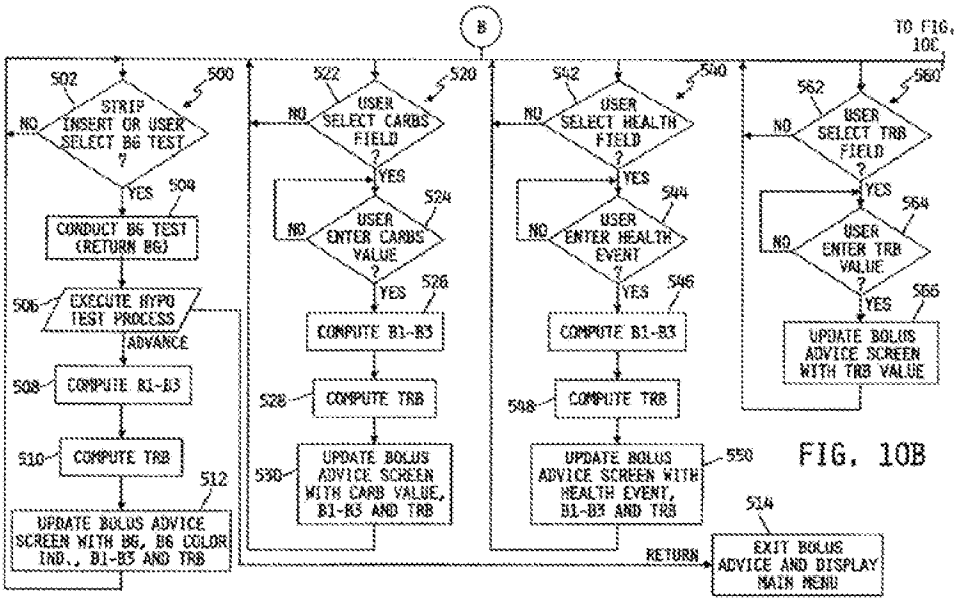

FIG. 10B

Galley Fig. 10B. "FIGS. **10**A-**10**C show a flowchart of . . . a bolus advice process carried by the remote electronic device." Galley col. 4, ll. 19–21; *see also* Final Action 7 (discussing Galley Fig. 10B). Galley Fig. 10B shows a process, which may begin by a user inserting a glucose blood test strip into the device, and may be followed by the entering of other user information, such as health events, into the system. Galley col. 28, ll. 13–46; *see also* Final Action 7 (discussing Galley Fig. 10B). Galley Fig. 10B shows that prompts for inputting information regarding, e.g., carb values or user heath events, can be accepted or rejected ("YES" and "NO"). Galley Fig. 10B; *see also* Final Action 7–8 (discussing Galley Fig. 10B).

FF7. Galley disclosed:

> The "my data" process **306** illustratively provides for the viewing and editing of diary records, e.g., specific BG [blood glucose] test records and pump history records, and also for the analysis of the records over daily and/or weekly time periods. . . . The diary records may also be downloaded to a PC or other computer, and using compatible software all records may be viewed and/or analyzed. Each diary record may contain date and time, BG test result, meal time events, carbohydrate value, health event, bolus type, bolus amount and duration. The UI processor can filter and/or sort data from these data records.
>
> The "my data" process also provides for the analysis of the data records in the form of daily and weekly averages, and standard deviations, defined by time slot, and for trend analysis of any of the collected data. Standard day and standard week tables or graphs may be generated to view averages and/or trends. Various charting and table options are also available for presenting data in desired formats.

Galley col. 28; ll. 34–53; *see also* Final Action 7–8 (discussing Galley).

FF8. Galley disclosed:

> The medical device **14** includes a conventional processor **28** that is electrically connected to a wireless communication circuit **30**. The processor **28** includes a conventional memory unit **25** which has stored therein a number of processes in the form of instructions that are executable by the processor **28** to control operation of the medical device **14** and to wirelessly communicate with the electronic device **12**. In the illustrated embodiment, the medical device **14** further includes conventional non-volatile memory units **27** and **29**.

Galley col. 6, ll. 45–53; *see also* Final Action 7 (discussing Galley).

FF9. Galley taught transferring data from a glucose-measuring device to multiple databases of a remote device as follows:

> the UI processor **50** is operable to transfer operating data, e.g., event history information, from the medical device **14** to the remote electronic device **12** via the wireless communication link. In one embodiment, the remote electronic device **12** includes four separate databases that hold history information for computing boluses and for reviewing and/or further analyzing. Referring to FIG. **6**, a diagram is shown of one illustrative embodiment of four such databases that are included in the remote electronic device **12**, and that are illustratively located in the memory device **66**. The four databases include a BG/Diary database **65**, a pump records (PR) database **67**, a meal correction (MC) database **69** and a correction records (CR) database **71**.

Galley col. 19, l. 62 to col. 20, l. 15.

FF10. Galley disclosed Fig. 13, as follows:

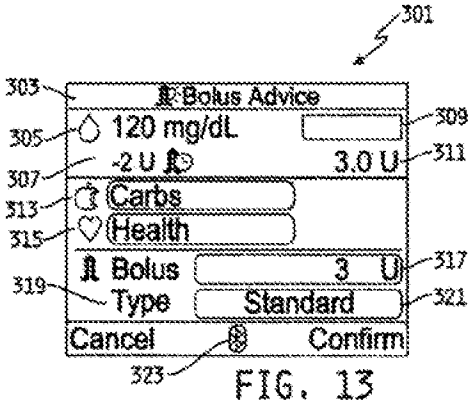

FIG. 13

Galley Fig. 13. Galley disclosed "FIG. **13** shows a graphic representation of . . . a bolus advice display screen produced by the process of FIGS. **10**A-**19**C." Galley col. 4, ll. 26–28; *see also* Final Action 8 (discussing Galley Fig. 13). Galley Fig. 13 shows a display of a blood glucose level and other

patient information. Galley Fig. 13; *see also* Final Action 8 (discussing Galley Fig. 13).

FF11. Galley disclosed:

> Illustratively, the "my data" feature corresponds to a data viewing, editing and reporting feature via which a user may view current, historical and trend data relating to operation of the on-board glucose meter and/or the medical device **14**. In any case, the "NO" branch at step **132** loops back to the beginning of step **132**, and the "YES" branch advances to step **134** where the UI processor **50** is operable to establish wireless connection with the medical device **14** as described above.

Galley col. 19, ll. 19–27; *see also* Final Action 8 (discussing Galley).

FF12. Soni disclosed "a system and method managing the implementation, execution, data collection, and data analysis of a structured collection procedure running on a portable, hand-held collection device," where the device can be a blood glucose measurement device. Soni Abstract, ¶ 8; *see also* Final Action 8 (discussing Soni).

FF13. Soni disclosed blood glucose meter data collection prompts, acceptance, denial, and snooze, as follows:

> [G]uidance **230** provided in the form of a question "Are you willing to conduct a test over 3 consecutive days?" is not affirmed by the patient **12** e.g., via a "No" selection provided on the collection device **24**. In this illustrated example, the "Affirms guidance" may be a drop down selection provided in a combo box for customizing the adherence criterion **224** of the associated collection event **237**, which when selected causes the processor **102** to wait for the accepted/not accepted input (e.g., via buttons **147**, **149**) before executing the remaining logic ("if not add 1 day to timing") of the adherence criterion **224**.

Soni ¶ 146; *see also* Final Action 8 (discussing Soni).

FF14. Soni disclosed blood glucose meter data collection prompts, acceptance, denial, and snooze, as follows:

> the processor **102** prompts via a request **240** for the patient **12** to take a reading around a lunch event as mandated by the collection procedure **70**. For example, the prompting of the request **240** may be an alarm provided by the processor **102** via indicator **148** that goes off, whereby the patient **12** is asked also on the display **108** by the processor **102** to take a reading. In one embodiment, the snooze feature as well as the skip reading feature are provided by the software **34**, where the patient **12** can use the user interface **146** to enable a delay or to skip the data collection.

Soni ¶ 190; *see also* Final Action 8 (discussing Soni).

FF15. Soni disclosed:

> The self-monitored data may include, but not [*sic*] limited thereto, the glucose values of a patient **12**, the insulin dose values, the insulin types, and the parameter values used by processor **102** to calculate future glucose values, supplemental insulin doses, and carbohydrate supplement amounts as well as such values, doses, and amounts.

Soni ¶ 66; *see also* Final Action 8 (discussing Soni).

FF16. Soni disclosed:

> The collection device **24** can further provide a user interface **146**, such as buttons, keys, a trackball, touchpad, touch screen, etc. for data entry, program control and navigation of selections, choices and data, making information requests, and the likes. . . . In one embodiment, the user can use one or more of buttons **147**, **149** to enter (document) contextualizing information, such as data related to the everyday lifestyle of the patient **12** and to acknowledge that prescribed tasks are completed. Such lifestyle data may relate to food intake, medication use, energy levels, exercise, sleep, general health conditions and overall well-being sense of the patient **12** (e.g., happy, sad, rested, stressed, tired, etc.). Such lifestyle data can be recorded into memory **110**

> and/or **112** of the collection device **24** as part of the self-monitored data via navigating through a selection menu displayed on display **108** using buttons **147**, **149** and/or via a touch screen user interface provided by the display **108**. It is to be appreciated that the user interface **146** can also be used to display on the display **108** the self monitored data or portions thereof, such as used by the processor **102** to display measured glucose levels as well as any entered data.

Soni ¶ 67; *see also* Final Action 8 (discussing Soni).

FF17. Soni disclosed:

> The collection device **24** in one embodiment can include a communication module **124**. The communication module **124** allows software (e.g., the software **34**, the collection procedures **70***a*, **70***b*, **70***c*, and **70***d*) and data (e.g., data resulting from completed collections performed according to one or more of the collection procedures **70***a*, **70***b*, **70***c*, and **70***d*) to be transferred between the collection device **24** and an external device(s) **126**. Examples of communication module **124** may include one or more of a modem, a network interface (such as an Ethernet card), a communications port (e.g., USB, firewire, serial, parallel, etc.), a PC or PCMCIA slot and card, a wireless transceiver, and combinations thereof. The external device(s) **126** can be the patient computer **18**, the clinician computer **25**, the handheld computing devices **36**, such as a laptop computer, a personal digital assistance (PDA), a mobile (cellular) phone, and/or a dongle, a docking station, or device reader **22**. . . . Software and data transferred via communication module **124** can be in the form of wired or wireless signals **128** . . . . Specific techniques for connecting electronic devices through wired and/or wireless connections (e.g. USB and Bluetooth, respectively) are well known in the art.

Soni ¶ 63; *see also* Final Action 8 (discussing Soni).

FF18. Soni disclosed:

> The software **34** residing on the client computer **25** serves as the interface between the server **52** and the meter **24**. . . . The

> software **34** also interfaces with a database that includes relevant patient data that is arranged by an individual patient ID, such as used by and provided in the healthcare record system **27**. The software interface also allows the clinician **14** to access the patient **12** details using the patient identifier. In this manner the software **34** provides the clinician **14** with information about the collection procedure(s) **70** that the patient **12** has already completed (i.e., those with a completed set for the completion flag **257**), the associated results, and also the collection procedure(s) **70** that the patient **12** is currently performing. All of the data residing on the client computer **25** is secure and access-controlled. The server **52** has no means to access the data. . . . In addition, an individual patient **12** can access his data, such as from a server of the clinicians, using his patient identifier in a secure web-based format. This data is downloaded to the database on computer **25** from the meter **24** and associated to the patient **12** using the patient identifier.

Soni ¶ 207; *see also* Final Action 8 (discussing Soni).

FF19. Soni disclosed:

> the collection device **24** can include the software and hardware necessary to process, analyze and interpret the self monitored data in accordance with predefined flow sequences (as described below in detail) and generate an appropriate data interpretation output. In one embodiment, the results of the data analysis and interpretation performed upon the stored patient data by the collection device **24** can be displayed in the form of a report . . . .

Soni ¶ 74; *see also* Final Action 8 (discussing Soni).

FF20. Sabo disclosed:

> A handheld diabetes management device having a database management system is disclosed. The device comprises a plurality of input modules, including a blood glucose reader, a user interface, a communications interface, and a continuous blood glucose input module. The input modules output data used to generate data records of different record types. The device further comprises N databases, each database having a different

> frequency range associated thereto, wherein the new record is stored in a particular database of the N databases based on the frequency range of the particular database and the frequency of the particular record type . . . .

Sabo Abstract; *see also* Final Action 9 (discussing Sabo).

FF21. Sabo disclosed accumulating and segregating data, as follows:

> In a first aspect of the disclosure, a handheld diabetes management device having a database management system is disclosed. The diabetes management device includes a blood glucose reader that receives a fluid sample from a patient and that outputs a blood glucose measurement that is used to generate a first record having a first record type, a user interface that receives input from a patient via an input device associated with the handheld diabetes management device and that outputs patient data that is used to generate a second record having a second record type, and a communication interface that receives data from an external device and that outputs device data that is used to generate a third record having a third record type. The first record type, the second record type, and the third record type are of a plurality of different record types, wherein each record type of the plurality of different record types has a corresponding frequency, wherein the frequency of a record type indicates an average amount of records having the record type received during a predetermined period of time. The handheld diabetes management device further comprises N databases, each database having a different frequency range associated thereto, wherein a new record of a particular record type based on data received from one of the blood glucose reader, the user interface, and the communication interface is stored in a particular database of the N databases based on the frequency range of the particular database and the frequency of the particular record type . . . .

Sabo ¶ 11; *see also* Final Action 9 (discussing Sabo).

FF22. Sabo disclosed accumulating and segregating data, as follows:

> a blood glucose reader that receives a fluid sample from a patient and that outputs a blood glucose measurement that is used to

> generate a first record having a first record type, ii) a user interface that receives input from a patient via an input device associated with the handheld diabetes management device and that outputs patient data that is used to generate a second record having a second record type based, iii) a communication interface that receives data from an external device and that outputs device data that is used to generate a third record having a third record type, and iv) a continuous blood glucose input module that receives a blood glucose reading from a continuous blood glucose meter and that outputs a continuous blood glucose measurements used to generate a fourth record of a fourth record type. The first record type, the second record type, the third record type, and the fourth record type are of a plurality of different record types, wherein each record type of the plurality of different record types has a corresponding frequency, and wherein the frequency of a record type indicates an average amount of records having the record type received during a predetermined period of time. The handheld diabetes management device further comprises a record generation module that receives data from one or more of the input modules and generates a new record of a particular record type based on the received data. The handheld diabetes management device also includes N databases, each database having a different frequency range associated thereto, wherein the new record is stored in a particular database of the N databases based on the frequency range of the particular database and the frequency of the particular record type . . . .

Sabo ¶ 12; *see also* Final Action 9 (discussing Sabo).

FF23. Sabo disclosed:

> In another feature, the database integrity module further includes a continuous blood glucose input module that receives a blood glucose reading from a continuous blood glucose meter and outputs a continuous blood glucose measurement used to generate a fourth record of a fourth record type. The fourth

> record is stored in a different database of the N databases than a database storing the first records.

Sabo ¶ 64; *see also* Final Action 12 ("Sabo et al. teaches dedicating and storing specific data to a specific database.").

ANALYSIS

The Examiner, discussing all pending claims together, determined Galley taught a glucose measuring device, with circuitry to receive data from a test element, and an associated processor. FF1–FF11. The Examiner determined Galley taught providing prompts to a user to measure glucose followed by prompts to the user to input user information. FF1, FF3, FF6, FF10, FF11. The Examiner also determined Galley taught displaying blood glucose level, historical glucose data and statistical analysis, suggesting a log of glucose measurements. FF7, FF10, FF11.

The Examiner indicated Galley did not teach a first database to store user information and glucose data and a second database dedicated to storing glucose data only. Final Action 8. Also, the Examiner indicated Galley did not teach user options to accept, deny, or delay prompts for information. *Id.*

The Examiner combined Soni, also directed to a blood glucose measurement device (*see, e.g.*, FF12, FF15, FF16), with Galley for its teaching of accept, deny, and snooze features with respect to data collection. FF13, FF14. The Examiner also combined Soni's teaching of communication ports, downloading patient data from a database, displaying blood glucose measurements and historical trends (i.e., stored measurements) upon user request, and storing user information in a database. FF16–FF19.

The Examiner indicated the Galley-Soni combination did not teach a second database dedicated to glucose data only. For this, the Examiner combined Sabo, which also disclosed a handheld blood glucose measurement device. FF21. The Examiner determined Sabo taught collecting data for diabetes management, including blood glucose measurements, assigning a record type to respective types of data (e.g., blood glucose measurements), and storing each record type to a respective database. FF21, FF22. In this way, the Examiner determined Sabo taught a dedicated database for blood glucose measurement data.

We find the Examiner established a prima facie case for the obviousness of claims 1, 9, and 19. Appellants dispute this. Appellants argue only over claims 1, 9, and 19, therefore, all claims fall with these claims. We address Appellants' arguments below.

Regarding claim 1, Appellants contend the Galley-Soni-Sabo combination does not teach a first outlet port in communication with a first database to download only user information and glucose level data and a second outlet port in communication with a second database to download only glucose level data. App. Br. 5–6. We do not find the balance of evidence supports Appellants' argument.

A patent claim clause (e.g., a "whereby," "wherein," or "to [result]" clause) that merely states the result of the limitations in the claim adds nothing to the patentability or substance of the claim. *Lockheed Martin Corp. v. Space Systems/Loral, Inc.*, 324 F.3d 1308, 1319 (Fed. Cir. 2003) (holding a clause of a satellite-control-system claim directed to a result of rotating a structure "adds nothing to the substance of the claim"); *Texas*

Instr. Inc. v. U.S. Int'l Trade Comm'n, 988 F.2d 1165, 1171–72 (Fed. Cir. 1993) (holding claim language "merely describe[ing] the result of arranging the components of the claims" "adds nothing to the patentability or substance of the claim."). Here, beyond the recited first and second outlet ports, the remainder of the respective claim clauses (i.e., what data is communicated via respective ports) are merely directed to results of having the ports communicate with the databases (which, in any event, would be software-controlled, as was known according to the prior art of record). "[A]pparatus claims cover what a device *is*, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1468 (Fed. Cir. 1990). Both the Examiner and the Board may interpret the "result" language as not imposing any structural limitations on the apparatus of claim 1, and as determined by the Examiner, Soni teaches a plurality of outlet ports, which may be wired or wireless connections, as was well known in the art. FF17; *see also* FF18 (software serves as the interface between the device and external devices).

Even, assuming *arguendo*, the "result" clauses of the claims should be interpreted as structural in determining patentability, the prior art combination discloses blood glucose meters with communication circuits that communicate blood glucose and user information from a database (Galley), segregating data and communicating only blood glucose measurement data from a designated database (Sabo), and providing a plurality of communication outlet ports connected to a plurality of external devices to distribute this data (Soni) so as to render the entirety of the claims obvious. FF3, FF4, FF17, FF22; *cf.* Reply 3 (contending lack of inherency).

The Examiner determined that it would have been obvious to a person of ordinary skill in the art to make the prior art combination because the combined references are each directed to the same technology and one of ordinary skill in the art would have recognized the results of such a combination to have been predictable. Final Action 9. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

For the above reasons, we find that the evidence of record supports the Examiner's determination that claim 1 would have been obvious over Galley, Soni, and Sabo.

Regarding claims 9 and 19, Appellants contend that the Galley-Soni-Sabo combination fails to teach "requesting a glucose level report by a user" and "a report of glucose report measurements." App. Br. 6. We do not find the balance of evidence supports Appellants' argument.

As the Examiner determined, Soni disclosed providing a user interface for "making information requests" (FF16) and software/hardware to process data and generate an appropriate data interpretation output as a report (FF19). As determined by the Examiner, Sabo disclosed segregating data, such as blood glucose measurements, in respective databases. FF22, FF23.

For the above reasons, we find that the evidence of record supports the Examiner's determination that claims 9 and 19 would have been obvious over Galley, Soni, and Sabo.

C. The rejection of claim 6 under 35 U.S.C. § 103(a) over Galley, Soni, Sabo, and Brister.

Appellants have not contested the Examiner's prima facie case on the obviousness of claim 6, therefore, we summarily sustain this rejection. *See* MPEP § 1205.02, 8th ed., Rev. 9, Aug. 2012 ("If a ground of rejection stated by the examiner is not addressed in the appellant's brief, that ground of rejection will be summarily sustained by the Board.").

SUMMARY

The rejection of claims 1, 2, 6–9, 12, 13, 15, 16, 18–20, and 22–24 under 35 U.S.C. § 101 is reversed with respect to claim 1 and affirmed with respect to claims 9 and 19. Claims 12, 13, 15, 16, 18, 20, and 22–24 fall with claims 9 and 19 as not argued separately. 37 C.F.R. § 41.37(c)(1)(iv).

The rejection of claims 1, 2, 7–9, 12, 13, 15, 16, 18–20, and 22–24 under 35 U.S.C. § 103(a) over Galley, Soni, and Sabo is affirmed. Final Action 7. Claims 2 and 7–8 fall with claim 1 and claims 12, 13, 15, 16, 18, 20, and 22–24 fall with claims 9 and 19 as not argued separately. 37 C.F.R. § 41.37(c)(1)(iv).

The rejection of claim 6 under 35 U.S.C. § 103(a) over Galley, Soni, Sabo, and Brister is affirmed.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED