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EXAMINER
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* BRENT BACKHAUS, LORNA LUSIC, and  
DEAN EBESU

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Appeal 2017-002622  
Application 14/079,307  
Technology Center 3600

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Before ELENI MANTIS MERCADER, LINZY T. McCARTNEY, and  
JOHN P. PINKERTON, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the Examiner's Non-Final Rejection of claims 2–9, 12–17, 19–24, and 26–28.<sup>2</sup> Claims 11, 18, and 25 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellants identify Virtual Radiologic Corporation as the real party in interest. App. Br. 2. Virtual Radiologic Corporation identifies that it is wholly owned by American Radiology, LLC, which is wholly owned by MEDNAX Services, Inc., which is wholly owned by MEDNAX, Inc. *Id.*

<sup>2</sup> Claims 6, 15, and 22 are objected to as being dependent upon a rejected base claim and are not before us. Ans. 16.

## STATEMENT OF THE CASE

### *Introduction*

Appellants describe the disclosed and claimed invention as follows:

A system for managing remote doctor medical request workflow may include a workflow module that optimizes assignments of medical requests to remote doctors based on parameterized doctor and scheduling information and may further include a forecasting module that predicts the hospital credentials, state licenses or doctors needed to fulfill a projected volume of future medical requests. In one embodiment, radiologists are parameterized and then matched with requests for radiological readings based on information extracted from DICOM image headers and merged with associated information contained in a medical work order. In this embodiment, the radiologists are parameterized based on their locations, schedules, hospital credentials, state licensing, compensation metrics, and performance metrics and incoming requests for review of CT scans and the like are filtered based on the parameterized radiologist information to identify one or more radiologists who are to fulfill the medical request.

Abstract.<sup>3</sup>

Claim 19 is representative and reproduced below (with the disputed limitations emphasized in italics):

19. A method for processing medical data in a workflow through use of a data processing system, the data processing system comprising at least one hardware processor performing electronic operations, the electronic operations including:

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<sup>3</sup> Our Decision refers to the Non-Final Office Action mailed Feb. 8, 2016 (“Non-Final Act.”); Appellants’ Appeal Brief filed Aug. 9, 2016 (“App. Br.”) and Reply Brief filed Dec. 5, 2016 (“Reply Br.”); the Examiner’s Answer mailed Oct. 4, 2016 (“Ans.”); and the original Specification filed Nov. 13, 2013 (“Spec.”).

processing electronic imaging data to obtain evaluation characteristics from metadata of the electronic imaging data, wherein the electronic imaging data includes the metadata and a plurality of digital medical images that originate from a medical imaging procedure performed by a medical imaging modality:

determining at least one requirement for a diagnostic evaluation of the plurality of digital medical images using the evaluation characteristics indicated in the metadata, wherein the plurality of digital medical images provide digital representations of at least a portion of a human subject captured by the medical imaging modality;

determining, from an electronically stored data record, parameterized qualification characteristics for a plurality of evaluators including a particular evaluator, the particular evaluator associated with at least one qualification that is tracked by the parameterized qualification characteristics;

*maintaining electronic worklists associated with respective evaluators of the plurality of evaluators, the electronic worklists for the respective evaluators providing a listing of one or more pending diagnostic evaluations designated for performance by the respective evaluators, wherein the electronic worklists for the respective evaluators include an electronic worklist for the particular evaluator;*

designating the particular evaluator for performance of the diagnostic evaluation, the particular evaluator designated from among the plurality of evaluators, and the particular evaluator designated based on a corresponding match of the at least one qualification of the particular evaluator with the at least one requirement for the diagnostic evaluation;

*updating the electronic worklist for the particular evaluator in response to designating the particular evaluator, wherein the electronic worklist for the particular evaluator is updated to include a pending evaluation for the performance of the diagnostic evaluation of the plurality of digital medical images*

*in the listing of the one or more pending diagnostic evaluations designated for performance by the particular evaluator; and*

*transmitting the plurality of digital medical images to a computing device associated with the particular evaluator, wherein the plurality of digital medical images are viewable at the computing device associated with the particular evaluator in response to acceptance of the diagnostic evaluation of the plurality of digital medical images from the electronic worklist for the particular evaluator.*

App. Br. 31–32 (Claims App’x).

*Rejections on Appeal*

Claims 2–10,<sup>4</sup> 12–17, 19–24, and 26–28 stand rejected on the ground of nonstatutory double patenting over claims 1–24 of U.S. Patent 8,515,778 B2.<sup>5</sup>

Claims 2–10,<sup>6</sup> 12–17, 19–24, and 26–28 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter.

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<sup>4</sup> Although the Examiner did not mention claim 10 in this rejection, we have included claim 10 because we conclude the Examiner’s omission was an inadvertent error.

<sup>5</sup> Appellants state that the Examiner’s nonstatutory double patenting rejection of claims 2–9, 12–17, 19–24, and 26–28 “is not being appealed presently.” App. Br. 11. Because Appellants are required to present arguments with respect to each ground of rejection, but do not do so with respect to the nonstatutory double patenting rejection, we summarily sustain the rejection of claims 2–10, 12–17, 19–24, and 26–28 on the ground of nonstatutory double patenting over claims 1–24 of U.S. Patent 8,515,778 B2. *See* 37 C.F.R. § 41.37(c)(1)(iv).

<sup>6</sup> Although the Examiner failed to include claim 10 in the introductory portion of the rejection (*see* Non-Final Act. 4), claim 10 is specifically referred to in the latter portion of the rejection (*see id.* at 6). Thus, we conclude claim 10 is included in the Examiner’s § 101 rejection.

Claims 2–5, 7–10, 12–14, 16, 17, 19–21, 23, 24, and 26–28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pinsky et al. (US 5,469,353; issued on Nov. 21, 1995) (“Pinsky”) and Gropper et al. (US 2003/0126148 A1; published July 3, 2003) (“Gropper”).

## ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments in the Briefs. For the reasons discussed *infra*, we are not persuaded by Appellants’ arguments that the Examiner erred in rejecting (1) claims 2–10, 12–17, 19–24, and 26–28 under 35 U.S.C. § 101 or (2) claims 2–5, 7–10, 12–14, 16, 17, 19–21, 23, 24, and 26–28 under 35 U.S.C. § 103(a).

### *Rejection Under § 101*

#### Applicable Law

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “Laws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (citation omitted).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 75–77 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. The first step in the analysis is to “determine whether the claims at

issue are directed to one of those patent-ineligible concepts.” *Id.* For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57. The “directed to” inquiry asks not whether “the claims *involve* a patent-ineligible concept,” but instead whether, “considered in light of the specification, . . . ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (citations omitted). In that regard, we determine whether the claims “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016) (citation omitted).

If, at the first stage of the *Alice* analysis, we conclude that the claim is not directed to a patent-ineligible concept, it is considered patent eligible under § 101 and the inquiry ends. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016).

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). In other words, the second step is to “search for an “‘inventive concept’”—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (brackets in original) (quoting *Mayo*, 566

U.S. at 72–73). The prohibition against patenting an abstract idea “cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant postsolution activity.’” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (internal citation omitted).

### Appellants’ Arguments<sup>7</sup>

Appellants argue the Examiner failed to establish a prima facie case of subject matter ineligibility because the Examiner (1) did not fully articulate the abstract idea, (2) did not establish that the respective elements of the claims are directed to an abstract idea, and (3) “failed to provide proper evidence that the claims do not amount to significantly more than an abstract idea.” App. Br. 16. According to Appellants, even assuming arguendo that the claims are directed to an abstract idea, the elements of the claims “amount to significantly more” as confirmed by the recent *Enfish* and *BASCOM* cases. *Id.*

In particular, Appellants argue the Examiner failed to articulate how the claimed invention is directed to a judicial exception by identifying certain claim elements or concepts individually and not in the context in which these operations are conducted in the claims. *Id.* at 17. Appellants argue the Examiner appears to be applying a “shotgun” approach to identifying an alleged abstract idea, with the hope that one characterization sticks. *Id.* Appellants also argue the Examiner erred in finding the claims

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<sup>7</sup> Appellants argue claims 2–10, 12–17, 19–24, and 26–28 as a group. *See* App. Br. 15–23; Reply Br. 4–10. We consider method claim 19 to be representative of the claimed subject matter on appeal and, therefore, we decide the § 101 rejection of claims 2–10, 12–17, 19–24, and 26–28 on the basis of representative claim 19. *See* 37 C.F.R. § 41.37(c)(1)(iv).

recite the concept of “designating an evaluator based on a match between the evaluator’s qualifications and a requirement for diagnostic evaluation” because this is “a rewording of one recitation from the pending claims.” *Id.* (emphasis omitted). Appellants further argue “the Examiner has not provided the necessary support to maintain the rejection.” *Id.* at 18. In the Reply Brief, Appellants further argue the Examiner improperly dissected the claims and failed to consider the claims as a whole. Reply Br. 4–5. Appellants also argue the Examiner’s oversimplification and comparison of the claims to those in *SmartGene*, *Cyberfone*, *In re Meyer*, and *Accenture* “might be relevant if the appealed claims actually recited any of these concepts[],” but “[t]hey do not.” Reply Br. 5.

Regarding Appellants’ contention that the Examiner failed to establish that the claimed subject matter is abstract, Appellants argue “[t]he involvement of specific computer elements and data processing, transmission, and actions in the claims calls the entire premise of abstractness into question.” App. Br. 19. Appellants argue that, like *Enfish*, the “claims are directed to an improvement in computer technology; the claims result in an improvement to the functioning of the computer network and computer system itself even before an interpretation (e.g., a radiological read) is performed.” *Id.* Appellants also argue that the claims cannot be characterized as “a method of organizing human activity” or “An Idea ‘Of Itself.’” *Id.* at 20. In that regard, Appellants argue “[t]he recited operations are performed electronically and in a computer, excluding any possibility that the claims are directed to human activities or mental ideas by themselves.” *Id.* Appellants further argue that, based on *Amdocs*, in which the claims were found patent eligible where “generic components [operated]

in an unconventional manner” to achieve “an improvement in computer functionality,” and the computer functionality recited in the claims, “the Examiner’s findings of abstractness cannot be sustained as a matter of law.” Reply Br. 6–7.

Regarding Appellants’ contention that the Examiner failed to establish that the claimed subject matter is not “significantly more” than a judicial exception, Appellants argue the Examiner’s analysis is brief and needs to be fully performed because of “the Examiner’s own concession that at least some of the claims include novel features over the prior art of record.” App. Br. 21. Appellants assert they do not understand how some claims can be considered novel and nonobvious, and yet still be “characterized as abstract and ‘well understood, routine, and conventional’ in light of the same art.” *Id.* Appellants also argue that, “[e]ven so, the remaining claims are significantly more than the alleged judicial exception, and invoke elements that are not well-understood, routine, or conventional in the art.” *Id.* Appellants further argue *BASCOM* held that “a claim can recite ‘known, conventional pieces’” but still result in “‘significantly more’ than an abstract idea” and that the claims here “provide meaningful limits, with anything but a conventional or generic arrangement.” *Id.* at 22. Appellants also argue that *McRO* shows that “the use of a computer-driven performance of a process—even a process that could be performed with rules on a generic computer—cannot be automatically excluded from subject matter eligibility.” Reply Br. 9.

Prima Facie Case

Before substantively analyzing claim 19 under the two-step *Alice* test, we address Appellants’ contention that the Examiner failed to establish a prima facie case of subject matter ineligibility. *See* App. Br. 16. Here, the Examiner stated the statutory basis for the rejection, namely, “under 35 U.S.C. [§] 101 because the claimed invention is directed to a judicial exception . . . without significantly more.” Non-Final Act. 4. The Examiner also performed the two-step *Alice* test. *Id.* at 4–6; Ans. 8–15. Thus, we conclude the Examiner provided an adequate explanation of the rejection under § 101 and met the notice requirement of 35 U.S.C. § 132. *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011).

In view of the Examiner’s findings and conclusions in the Answer and Non-Final rejection, we also are not persuaded by Appellants’ argument that the Examiner did not fully articulate the abstract idea (*see* App. Br. 16), particularly in view of the Examiner’s finding that the claims may also be considered “a method of organizing human activity (i.e. managing human behavior – managing tasks by assigning them to qualified radiologists as well as maintaining and updating worklists).” Non-Final Act. 5–6 (emphasis omitted). Furthermore, we are not persuaded by Appellants’ argument the Examiner failed to establish a prima facie case of ineligibility because the Examiner “failed to provide proper evidence” that the claims do not amount to significantly more than an abstract idea. *See* App. Br. 16. We disagree that the Examiner failed to provide evidence because the Examiner cited to the claims and the Specification in finding that the claims here are implemented on generic computers and “known systems.” *See* Ans. 13–14, 16, 18. We also find that Appellants’ argument is conclusory and fails to

identify any device, component, system or process recited in the claims that Appellants contend is not well-understood, routine, and conventional in the art, much less present any arguments in support of such contention. Thus, although our reviewing court recently held that “[t]he patent eligibility inquiry may contain underlying issues of fact” (*see Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018)), we find that Appellants’ argument is insufficient to raise an issue of fact requiring the Examiner to present evidence showing that any aspect of the claims is well-understood, routine, and conventional in the art.

#### Step One of *Alice*

Regarding claim 19, the preamble recites “[a] method for processing medical data in a workflow through use of a data processing system.” Claim 19 recites the steps of: (1) processing electronic image data to obtain evaluation characteristics from metadata of the imaging data; (2) determining at least one requirement for a diagnostic evaluation of the medical images using the characteristics in the metadata; (3) determining, from an electronically stored data record, parameterized qualification characteristics for a plurality of evaluators, including a particular evaluator; (4) maintaining electronic worklists associated with respective evaluators providing a listing of pending diagnostic evaluations for the particular evaluator; (5) designating the particular evaluator for performance of the diagnostic evaluation based on a match of at least one qualification of the evaluator with at least one requirement for evaluation; (6) updating the electronic worklist for the particular evaluator in response to designating the particular evaluator; and (7) transmitting the medical images to a computing device associated with the particular evaluator where they are viewable in

response to acceptance<sup>8</sup> of the evaluation from the worklist for the particular evaluator

Considering the focus of claim 19 as a whole, we agree with the Examiner’s conclusion that claim 19 is directed to an abstract idea—a method of organizing human activity, i.e., managing the performance of diagnostic evaluations by assigning them to qualified evaluators, as well as maintaining and updating worklists. Non-Final Act. 5–6. As discussed *infra*, claim 19 is directed to a combination of features that we conclude are similar or analogous to claims in other cases that courts have found are directed to an abstract idea. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“The concept of data collection, recognition, and storage is undisputedly well-known.”); *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (claims focus on the abstract idea of collecting information, analyzing it, and displaying certain results of the collection and analysis); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (holding that the claimed invention is directed “to the abstract idea of collecting, displaying, and manipulating data of particular documents”); *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x 950, 954 (Fed. Cir. 2014) (claims recite comparing new and stored information and using rules to identify options).

In particular, consistent with the Examiner’s conclusions, we conclude step (1) of “processing electronic imaging data” to obtain evaluation

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<sup>8</sup> As discussed *infra* regarding the rejection under § 103, the Examiner concludes, and we agree, the term “acceptance” means “selection.” *See* Ans. 3.

characteristics from metadata of the imaging data, step (2) of “determining at least one requirement for a diagnostic evaluation” of the medical images using the characteristics indicated in the metadata, and step (3) of “determining, from an electronically stored data record, parameterized qualification characteristics for a plurality of evaluators[,] including a particular evaluator,” of claim 19, are directed to collecting and analyzing information, which courts have held are in the realm of abstract ideas. *See Electric Power*, 830 F.3d at 1353–54.

We also conclude that step (3) of “determining, from an electronically stored data record, parameterized qualification characteristics for a plurality of evaluators[,] including a particular evaluator,” step (4) of “maintaining electronic worklists associated with respective evaluators” providing a listing of pending diagnostic evaluations for the particular evaluator, step (5) of “designating the particular evaluator for performance of the diagnostic evaluation . . . based on a corresponding match” of at least one qualification of the evaluator with at least one requirement for evaluation, and step (6) of “updating the electronic worklist” could be performed by a human with pen and paper. In that regard, our reviewing court has held that “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, [are] essentially mental processes within the abstract-idea category.” *Electric Power*, 830 F.3d at 1354; *see also Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146 (Fed. Cir. 2016). “[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.” *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012).

We also conclude, as does the Examiner, that step (5) of “designating the particular evaluator. . . based on a corresponding match” of at least a qualification of the evaluator and one requirement for evaluation is directed to “using rules that select an evaluator based on which one best matches the requirements of the study.” Ans. 10 (citing *SmartGene*). We further conclude that step (7) of “transmitting” the medical images to a computing device associated with the particular evaluator where they are viewable is abstract “as an ancillary part of such collection and analysis” of information as set forth in steps (1)–(6) of claim 19. *See Electric Power*, 830 F.3d at 1354.

Appellants argue the Examiner failed to articulate how the claimed invention is directed to a judicial exception by (1) identifying certain claim features individually and out of context, (2) using a “shotgun” approach, (3) rewording one recitation from the claims, and (4) improperly dissecting the claims. *See* App. Br. 16–18; Reply Br. 4–5. We do not agree. As reflected in the foregoing analysis of claim 19, it is directed to a combination of features, as set forth in steps (1)–(7). Thus, it was necessary for the Examiner to consider these various features, individually or as groups, and in doing so, the Examiner properly considered all of the limitations of claim 19.

As discussed *supra*, we conclude, as does the Examiner, that the various features of claim 19 are directed to abstract ideas. In that regard, we note that merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea . . . to another abstract idea . . . does not render the claim non-abstract.”); *see also*

*FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1094 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas). Thus, for these same reasons, we also are not persuaded by Appellants’ argument that the Examiner did not establish that the respective elements of claim 19 are directed to an abstract idea. *See* App. Br. 16, 19–20.

Although Appellants argue that the claims are directed to an improvement to the functioning of the computer network and computer system, even before a radiological read is performed (*see* App. Br. 19), this argument is not convincing because it is conclusory and unsupported by the claim language. *See Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) (admonishing that “the important inquiry for a § 101 analysis is to look to the claim”; “the complexity of the implementing software or the level of detail in the specification does not transform a claim reciting only an abstract concept into a patent-eligible system or method”). Nor have Appellants identified any portion of the Specification, or provided any evidence or technical reasoning, demonstrating that claim 19 achieves a technical advance or improvement to the computer network and computer system. Contrary to Appellants’ arguments that the claims are similar to those in *Enfish* and *Amdocs* (*see* App. Br. 19; Reply Br. 6–7), Appellants have not demonstrated that their claims “improve the way a computer stores and retrieves data in memory,” as the claims in *Enfish* did via a “*self-referential* table for a computer database.” *See Enfish*, 822 F.3d at 1336, 1339. Appellants have also not demonstrated that their claims provide an “unconventional technological solution . . . to a technological problem” that “improve[s] the performance of

the system itself,” as explained in *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300, 1302 (Fed. Cir. 2016). Thus, we agree with the Examiner’s finding that “the claims do not recite an asserted improvement to the functioning of the computer itself, but rather recite using a computer to lend speed and efficiency to an abstract idea.” Ans. 14–15. Furthermore, Appellants’ argument that the claims cannot be characterized as a method of organizing human activity because the recited operations are performed electronically and in a computer (*see* App. Br. 20) is unpersuasive because it is conclusory and unsupported and because it is well known that computers are often used in managing transactions involving people. Accordingly, we agree with the Examiner that managing the performance of diagnostic evaluations by assigning them to qualified evaluators is a method of organizing human activities constituting an abstract idea. *See, e.g.*, July 2015 Update: Subject Matter Eligibility to 2014 Interim Guidance on Subject Matter Eligibility (2014 IEG), 79 Fed. Reg. 74618 (Dec. 16, 2014) (“[C]ases have found concepts relating to managing relationships or transactions between people abstract.”).

#### Step Two of *Alice*

Regarding step two of the *Alice* analysis, even though the Examiner’s analysis is brief, as Appellants note (*see* App. Br. 21), for the reasons stated by the Examiner, we agree with the Examiner’s conclusion that the elements of the claims do not provide “significantly more” than the abstract idea. *See* Non-Final Act. 6; *see also* Ans. 13–15. We are not persuaded by Appellants’ arguments that the Examiner erred.

First, we not persuaded by Appellants’ argument that they do not understand how the Examiner can find some of the claims are novel and

non-obvious, and still be characterized as abstract and well-understood, routine, and conventional in light of the same art. App. Br. 21. A finding of novelty or non-obviousness does not automatically lead to the conclusion that the claimed subject matter is patent-eligible. Although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice Corp.*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 72–73). “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘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”).

Second, we are not persuaded by Appellants’ argument that the remaining claims are “significantly more” and “invoke elements that are not well-understood, routine, or conventional in the art” because it is conclusory and unsupported by any citation to the Specification, claims or other evidence. App. Br. 21. Third, Appellants’ arguments that *BASCOM* held a claim can recite known, conventional pieces and still result in “significantly more” and that the claims here provide meaningful limits, with anything but a conventional or generic arrangement are unpersuasive. *Id.* at 22. We

agree with Appellants that the court in *Bascom* noted that an inventive concept can be found in a non-conventional and non-generic arrangement of known, conventional pieces. *See Bascom*, 827 F.3d at 1350. However, the claims here are distinguishable from those in *Bascom*. In *Bascom*, the system claims were directed to a “content filtering system for filtering content retrieved from an Internet computer network,” which the court held were directed to an abstract idea. *Id.* at 1348–49. The court further held the claims included an inventive concept in the ordered combination of system components, including a local client computer and a remote ISP server connected to the client computer and Internet computer network providing for “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” *Id.* at 1350. Appellants have failed to establish that claim 19 includes a similar or analogous arrangement or “ordered combination” of components and instead make only the conclusory statement that the claims here provide “anything but a conventional or generic arrangement.”

Fourth, Appellants’ argument that *McRO* shows that even a process that could be performed with rules on a generic computer cannot be automatically excluded from eligibility is unpersuasive. Reply Br. 9. Unlike the claims in *McRO*, claim 19 does not “focus on a specific means or method that improves the relevant technology,” but is “directed to a result or effect that itself is the abstract idea and merely invoke[s] generic processes and machinery.” *McRO*, 837 F.3d at 1314 (citation omitted). This is not enough to transform an abstract idea into patent-eligible subject matter. *See, e.g., Alice*, 134 S. Ct. at 2360 (explaining that claims that “amount to ‘nothing significantly more’ than an instruction to apply the abstract idea . . .

using some unspecified, generic computer” “is not ‘*enough*’ to transform an abstract idea into a patent-eligible invention” (quoting *Mayo*, 566 U.S. at 77, 79)); *Intellectual Ventures*, 850 F.3d at 1342 (“[T]he claim language here provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it. Our law demands more.”).

Thus, we see nothing in the limitations of claim 19, considered both “individually and ‘as an ordered combination,’” that transforms the claimed abstract idea into patent-eligible subject matter.

Accordingly, we sustain the Examiner’s rejection of claim 19 under § 101. For the same reasons, we sustain the rejection of independent claims 2 and 12, and dependent claims 3–10, 13–17, 20–24, and 26–28, which are not separately argued, under § 101.

*Rejection Under § 103(a)*

The Examiner finds that Gropper teaches the disputed “maintaining,” “updating,” and “transmitting” limitations of claim 19. Non-Final Act. 9–10 (citing Gropper ¶¶ 9, 11, 14, 16, 18 (regarding the “maintaining” limitation), ¶¶ 9–11, 13, 14 (regarding the “updating” limitation), ¶¶ 11, 12, 18, 20, 22 (regarding the “transmitting” limitation)). Although Appellants argue the Examiner’s findings are in error (*see* App. Br. 13–15), we do not agree.

Regarding the “maintaining” limitation, Appellants argue Gropper teaches a worklist “shared among an entire group of users,” rather than associated with “respective evaluators.” App. Br. 13–14 (citing Gropper ¶¶ 9, 18). This argument is not persuasive because, as the Examiner finds, Gropper teaches “[e]ach worklist is associated with one or more user[s].” Ans. 4 (citing Gropper ¶ 18). Appellants also argue Gropper does not teach that the pending diagnostic evaluation is “designated for performance by the

particular evaluator.” App. Br. 14; Reply Br. 3–4. This argument is not persuasive either because, as the Examiner finds, Gropper teaches worklist items are “assigned” to a radiologist or a group of radiologists. Ans. 4 (citing Gropper ¶¶ 67, 68). We agree with the Examiner that the claimed “evaluations designated for performance by the respective evaluators” reads on Gropper’s teaching of the worklist item, i.e., “images and associated study information,” being “assigned to a radiologist.” See Gropper ¶ 67.

Regarding the “updating limitation,” Appellants argue that because Gropper does not teach maintaining an electronic worklist for a particular evaluator, Gropper does not teach “updating of the electronic worklist for this particular evaluator in the manner claimed.” App. Br. 14. We are not persuaded by this argument because, as discussed *supra*, Gropper teaches worklists are maintained for a particular evaluator and worklist items are assigned to a radiologist. Ans. 4 (citing Gropper ¶¶ 18, 67); *see also id.* at 5 (citing Gropper ¶¶ 2, 3, 14, 46, 56). Furthermore, the Examiner finds, and we agree, that “Gropper provides ‘real-time updates’ of the worklist sent immediately after the worklist is assembled.” *Id.* at 5 (citing Gropper ¶¶ 11, 46).

Regarding the “transmitting” limitation, Appellants argue Gropper does not teach or suggest “‘*acceptance of the diagnostic evaluation*’ from a worklist” or “‘*transmitting data . . . in response to acceptance.*’” App. Br. 14–15. This argument is not persuasive because it is not commensurate with the scope of claim 19. The Examiner concludes, and we agree, claim 19 and the Specification makes it clear “that the images are transmitted to the doctor computer without any interaction of the doctor with the worklist.” Ans. 3 (citing Spec. 9:16–31, 12:12–18, 17:5–12, 18:23–19:2, 21:23–30). That is,

contrary to Appellants' argument, claim 19 does not require that the medical images are transmitted to a doctor's computing device "in response to acceptance of the diagnostic evaluation." Instead, the Examiner also concludes, and we agree, claim 19 is properly construed to mean that the "images are viewable at the computing device associated with the particular evaluator in response to acceptance of the diagnostic evaluation of the . . . images from the electronic worklist." *Id.* (emphasis added). The Examiner also concludes, and we agree, the term "acceptance" means "selection." Ans. 3. The Examiner further finds, and we agree, that Gropper teaches "acceptance [or selection] of the diagnostic evaluation of the [images]." *See* Non-Final Act. 10 (citing ¶¶ 11, 12, 18, 20, 22) (emphasis omitted); Ans. 4 (citing Gropper ¶¶ 67–68). In the Reply Brief, Appellants do not respond to the Examiner's conclusions or findings regarding the "transmitting" limitation. Thus, we are not persuaded of Examiner error with respect to this limitation.

Accordingly, we sustain the Examiner's rejection of claim 19 under § 103(a). For the same reasons, we also sustain the Examiner's rejection of independent claims 2 and 12, as well as dependent claims 3–5, 7–9, 13, 14, 16, 17, 20, 21, 23, 24, and 26–28, under § 103(a).

## DECISION

We affirm the Examiner's decision rejecting claims 2–10, 12–17, 19–24, and 26–28 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 2–5, 7–10, 12–14, 16, 17, 19–21, 23, 24, and 26–28 under 35 U.S.C. § 103(a).

Appeal 2017-002622  
Application 14/079,307

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). *See* 37 C.F.R. § 1.136(a)(1)(iv)(2016).

AFFIRMED