UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte GLEN DE VRIES,
MLADEN LAUDANOVIC,
and ANGEL JANEVSKI

———————

Appeal 2017-003229[1]
Application 14/492,597[2]
Technology Center 3600

———————

Before MURRIEL E. CRAWFORD, BRUCE T. WIEDER, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final
rejection of claims 6 and 8–14. We have jurisdiction under 35 U.S.C. § 6(b).
An oral hearing was conducted on February 14, 2019.

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[1] Our decision references Appellants' Appeal Brief ("App. Br.," filed
August 1, 2016), Supplemental Brief (Supp. Br., filed "February 5, 2019),
Reply Brief ("Reply Br.," filed January 4, 2017), and the Examiner's
Answer ("Ans.," mailed November 4, 2016) and Final Office Action ("Final
Act.," mailed September 30, 2015).
[2] Appellants identify Medidata Solutions, Inc., as the real party in interest.
Appeal Br. 3.

We AFFIRM.

CLAIMED INVENTION

Appellants' claims relate to a method and system for monitoring clinical trial progress which "includes calculating progress curves for clinical trial states" (Abstract).

Claims 6 and 11 are the independent claims on appeal. Claim 6, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

> 6. A system for monitoring progress of a clinical trial, comprising:
> [a] a data collector including a processor for collecting data from at least one clinical trial database and for producing current statuses of the trial and historical audits;
> [b] an historical statuses reconstructer including a processor for converting the current statuses and historical audits to generate aggregated tracking data;
> [c] a progress curve generator including a processor for converting the aggregated tracking data to calculate a first progress curve for a first state of the clinical trial over a time period and a second progress curve for a second state of the clinical trial over the same time period; and
> [d] a progress tracking service for transmitting first and second progress curves to a user, wherein the progress curve for a state comprises an amount of datapages within that state.

REJECTION

Claims 6 and 8–14 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

ANALYSIS

Patent-Ineligible Subject Matter

Appellants argue the pending claims as a group (Appeal Br. 5–17; Reply Br. 3–15). We select independent claim 6 as representative, and the The remaining claims stand or fall with claim 6. *See* 37 C.F.R. § 41.37(c)(1)(iv).

An invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is "directed to." *See id.* at 219 ("On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.,* the use of a third party to mitigate settlement risk."); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk.").

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and

mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts
determined to be patent eligible include physical and chemical processes,
such as "molding rubber products" (*Diamond v. Diehr*, 450 U.S. 175, 192
(1981)); "tanning, dyeing, making water-proof cloth, vulcanizing India
rubber, smelting ores" (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S.
252, 267–68 (1853))); and manufacturing flour (*Gottschalk*, 409 U.S. at 69
(citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the
Supreme Court held that "[a] claim drawn to subject matter otherwise
statutory does not become nonstatutory simply because it uses a
mathematical formula." *Diehr*, 450 U.S. at 176; *see also id.* at 191 ("We
view respondents' claims as nothing more than a process for molding rubber
products and not as an attempt to patent a mathematical formula."). Having
said that, the Supreme Court also indicated that a claim "seeking patent
protection for that formula in the abstract . . . . is not accorded the protection
of our patent laws, . . . and this principle cannot be circumvented by
attempting to limit the use of the formula to a particular technological
environment." *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 ("It is now
commonplace that an *application* of a law of nature or mathematical formula
to a known structure or process may well be deserving of patent
protection.").

If the claim is "directed to" an abstract idea, we turn to the second
step of the *Alice* and *Mayo* framework, where "we must examine the
elements of the claim to determine whether it contains an 'inventive
concept' sufficient to 'transform' the claimed abstract idea into a patent-
eligible application." *Alice*, 573 U.S. at 221 (quotation marks omitted). "A

claim that recites an abstract idea must include 'additional features' to ensure 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].'" *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). "[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention." *Id.*

The PTO recently published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Guidance"). Under that guidance, we first look to whether the claim recites:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application, i.e., that "apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception." Guidance at 53; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not "well-understood, routine, conventional" in the field (*see* MPEP § 2106.05(d)); or

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

See Guidance.

Here, in rejecting the pending claims under 35 U.S.C. § 101, the Examiner determined that the claims "are directed to the abstract idea of organizing clinical trial documents using a progress curve" (Final Act. 2; Ans. 2), and more particularly,

> directed towards using a general processor to carry out basic computer functions of organizing clinical trial documents using a progress curve. The abstract idea is similar to the abstract idea of using categories to organize, store, and transmit information (categorize the different aggregated tracking curve into progress curves) (*Cyberfone*); comparing new (collecting data from clinical trial databases) and stored information (historical statuses) and using rules (how to generate progress curves based on information) to identify options (progress curves) (*SmartGene*).

Ans. 3; *see also id.* at 4–5. The Examiner also determined that the claims do not include limitations that amount to "significantly more" than the abstract idea itself "because the claims are using general computer [sic] to carry out general computer functions" (Final Act. 2).

We are not persuaded, as an initial matter, by Appellants' argument that the Examiner erred in determining that claim 6 is directed to an abstract idea (Appeal Br. 5–12; *see also* Reply Br. 3–9; Supp. Br. 7–11). The Federal Circuit has explained that "the 'directed to' inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether 'their character as a whole is directed to excluded subject matter.'" *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016)

(quoting *Internet Patents Corp. v. Active Network, Inc,* 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an "abstract idea" for which computers are invoked merely as a tool. *See id.* at 1335–36. Here, the Specification, including the claim language, make clear that the claims focus on an abstract idea, and not on any improvement to computer technology and/or functionality.

The Specification is titled "METHOD AND SYSTEM FOR MONITORING CLINICAL TRIAL PROGRESS." The Background section of the Specification describes that clinical trials "are generally very expensive to undertake and they often take a long time to complete" (Spec. ¶ 1). The Specification identifies that

> [s]ite and study monitoring have typically been performed with significant time lags and with a fairly coarse view of the data collection and management. Traditional data monitoring tools may utilize only the current status of data elements (sometimes called "object status") and may not include input from historical changes in the data collection process.

Id. ¶ 16. According to the Specification, traditional monitoring techniques provide adequate information about the present status of a clinical trial, "but may not allow adequate insight into the events that preceded the current state" (*id.*). To address these drawbacks, the present claims "allow the monitoring of a clinical trial by viewing the current and prior statuses of various data elements" (*id.* ¶ 16), and thus, enable the progress of a clinical trial to be expressed in terms of states in the lifetime of a datapage (*id.* ¶ 17).

Understood in light of the Specification, independent claim 6 is, thus, directed to "[a] system for monitoring progress of a clinical trial," and includes a processor for "collecting data," "converting the [data] to generate

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aggregated tracking data," "converting the aggregated tracking data to calculate a first [and second] progress curve for a first [and second] state of the clinical trial over a time period," and "transmitting" the progress curves to a user. Thus, we agree with the Examiner that independent claim 6 is directed broadly to monitoring or tracking the progress of a clinical trial using a process curve.

The Federal Circuit has consistently held that abstract ideas include the concepts of collecting data, analyzing the data, and displaying the results of the collection and analysis, including when limited to particular content. *See, e.g., Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (identifying the abstract idea of collecting, displaying, and manipulating data); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as matters within the realm of abstract ideas); *see also SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018) ("As many cases make clear, even if a process of collecting and analyzing information is 'limited to particular content' or a particular 'source,' that limitation does not make the collection and analysis other than abstract." (quoting *Elec. Power Grp.*, 830 F.3d at 1353, 1355 (citing cases))). *Cf.* Guidance at 52–53.

We find no indication in the Specification, nor do Appellants direct us to any indication, that the operations recited in independent claim 6 invoke any assertedly inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine,

or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) ("[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.").

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes any improvement in computer technology and/or functionality to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a "practical application," as that phrase is used in the revised Guidance. *See* Guidance, 55.

It also is significant here that although independent claim 6 recites that the system processes are performed by "a processor," the processes can be performed by a human, e.g., mentally or manually, using a pen and paper, without the use of a computer network or any other machine.[3] For example, the data can be collected manually (*see* Spec. ¶¶ 27, 56), the collected data can be converted into aggregated data and subsequently converted into a first and second progress curves, either mentally or manually (*see* Spec. ¶¶ 26, 28, 51–52), and then the first and second progress curves can be transmitted to a user orally or through a written communication (*see* Spec. ¶¶ 29–30).

The law is clear that a claim whose steps can be performed in the human mind or by a human using a pen and paper is directed to a patent-ineligible mental process, i.e., to an abstract idea. *See CyberSource Corp. v.*

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[3] We note that independent claim 11 does not even recite that the method steps are performed by a processor or a computer.

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Retail Decisions, Inc., 654 F.3d 1366, 1372–73 (Fed. Cir. 2011); *see also Gottschalk*, 409 U.S. at 67 ("Phenomena of nature . . ., mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work."). Moreover, mental processes remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *CyberSource*, 654 F.3d at 1375 ("That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.").

Appellants argue that the Examiner has overgeneralized the claims and that the Examiner's characterization "of the claims as being directed to 'organizing clinical trial documents using a progress curve'" is incorrect (Appeal Br. 5–9; Reply Br. 4–5). Appellants' argument is not persuasive at least because there is no requirement that the Examiner's formulation of the abstract idea copy the claim language. The Examiner's characterization here, moreover, is fully consistent with the Specification, as discussed above. That independent claim 6 includes more words than the phrase the Examiner used to articulate the abstract idea to which the claim is directed is an insufficient basis to persuasively argue that the claim language has been mischaracterized or that the Examiner has otherwise failed to consider all of the limitations of the claim. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016).

> An abstract idea can generally be described at different levels of abstraction. As the Board has done, the claimed abstract idea could be described as generating menus on a computer, or generating a second menu from a first menu and sending the second menu to another location. It could be described in other ways, including, as indicated in the

specification, taking orders from restaurant customers on a computer.

Appellants also argue that the claims are not directed to an abstract idea because "Appellant[s'] invention does not prevent others from tracking the progress of a clinical trial in other ways" (Appeal Br. 15–17; Reply Br. 14). That argument is not persuasive of Examiner error at least because preemption is not the sole test for patent-eligibility.

There is no dispute that the Supreme Court has described "the concern that drives [the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption." *Alice Corp.*, 573 U.S. at 216. But, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. "The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability" and "[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 573 U.S. at 215). "[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility." *Id.*

Appellants further argue that the pending claims are directed to an improvement in computer operation by claiming improved approaches to "convert[ing] the data fields, data records, and datapages to current and historical statuses of the clinical trial, generat[ing] aggregated tracking data, convert[ing] that data to calculate progress curves for various states of the trial over specific time periods, and, in some cases, determin[ing] the delay in a trial using those calculated progress curves" (Appeal Br. 12–15 (citing *Enfish*, 822 F.3d at 1327). However, there is a fundamental difference

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between computer functionality improvements, on the one hand, and uses of existing computers as tools to perform a particular task, on the other. Indeed, the Federal Circuit applied this distinction in *Enfish* in rejecting a § 101 challenge at the step one stage of the *Mayo/Alice* analysis because the claims at issue focused on a specific type of data structure, i.e., a self-referential table for a computer database, designed to improve the way a computer carries out its basic functions of storing and retrieving data, and not on asserted advances in uses to which existing computer capabilities could be put. *Enfish*, 822 F.3d at 1335–36.

We find no parallel here between claim 6 and the claims in *Enfish* nor any comparable aspect in claim 6 that represents "an improvement to computer functionality." In this regard, we note that the Specification discloses that "[t]here are several ways to calculate the progress curves," e.g., "calculate and store in real-time all datapage status rollups and changes at any datapoint state change," "compute datapage states periodically at regular time intervals (e.g. daily) and then calculate and store the resulting progress curves," and by "reconstructing datapage statistics historically from a historical trail of datapoint state changes (e.g., audit trails)" (Spec. ¶ 25). The alleged advantages that Appellants identify do not concern an improvement to computer capabilities or provide details on the technological manner in which the steps are performed, but instead relate to an alleged improvement in "monitor[ing] the progress of a trial, which, up until now, has not been adequately performed" (Spec. ¶ 1) through a process in which a computer is used as a tool in its ordinary capacity (*see, e.g.,* Spec. ¶ 28).

We also find no parallel between claim 6 and the claim at issue in *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir.

2016) (*see* Reply Br. 9–11). Appellants assert that like the claims in *McRO*,
independent claim 6 is patent-eligible because it provides a rule-based type
of clinical trial monitoring that "was not performed by a computer or was
done very simply" (Reply Br. 10). To support its argument, Appellants
assert that

> [b]efore Appellant[s'] invention, to the extent the progress of a
> clinical trial was tracked, a tracker may have needed to track
> individual patients, possibly by traveling to each site to do so.
> *See* Specification ¶ 0056. Such tracking involved "significant
> time lags" without a "detailed view of the data collection and
> management."

Reply Br. 10.

The Federal Circuit premised its determination that the claims in
McRO were patent-eligible, not merely on the specificity of the claimed
animation scheme, but rather on the fact that the claims, when considered as
a whole, were directed to a technological improvement over the existing,
manual 3-D animation techniques and used limited rules in a process
specifically designed to achieve an improved technological result in
conventional industry practice. We are not persuaded that a comparable
situation is presented here. As our reviewing court has made clear, "relying
on a computer to perform routine tasks more quickly or more accurately is
insufficient to render a claim patent eligible." *OIP Techs., Inc. v.
Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015).

Appellants further argue that independent claim 6 is patent eligible
under the new Guidance because the "claims are directed to a practical,
limited application" (Supp. Br. 7–11). However, we determine that
independent claim 6 does not "apply, rely on, or use the judicial exception in
a manner that imposes a meaningful limit on the judicial exception, such that

the claim is more than a drafting effort designed to monopolize the judicial

exception," i.e., the claim does not integrate the abstract idea into a practical

application. *See* Guidance, 55. Here, independent claim 6 recites a generic

processor that performs the functions of the abstract idea, i.e., collecting,

converting, calculating, and transmitting data, without particularity. And, as

our reviewing courts have made clear, the addition of a generic computer or

other conventional technology does not improve the computer so as to

transform an abstract idea into a patent-eligible application.[4] *See Alice*, 573

U.S. at 225–26 ("the claims at issue amount to 'nothing significantly more'

than an instructions to apply the abstract idea of intermediated settlement

using some unspecified, generic computer."); *Elec. Power Grp.*, 830 F.3d at

1355.

> Nothing in the claims, understood in light of the
> specification, requires anything other than off-the-shelf,
> conventional computer, network, and display technology . . . .
> We have repeatedly held that such invocations of computers
> and networks that are not even arguably inventive are
> insufficient to pass the test of an inventive concept in the
> application of an abstract idea.

(internal quotations omitted).

Appellants last argue that the present claims are patent-eligible

because they are similar to claim 1 of the USPTO's Example 42 in the

"Subject Matter Eligibility Examples: Abstract Ideas," published January 7,

2019 ("2019 Eligibility Examples") (Supp. Br. 7–11). More particularly,

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[4] We acknowledge that some of these considerations may be properly
evaluated under Step 2 of *Alice* (Step 2B of Office guidance). Solely for
purposes of maintaining consistent treatment within the Office, we evaluate
it under Step 1 of *Alice* (Step 2A of Office guidance). *See* 2019 Revised
Guidance, 84 Fed. Reg. at 55.

Appellants argue that the limitations of independent claim 6 provide "a marked improvement over the prior art that was 'performed with significant time lags and with a fairly coarse view of the data collection and management' process and did 'not allow adequate insight into the events that preceded the current state'" (Supp. Br. 10–11).

The difficulty with Appellants' argument is that exemplary claim 1 of Example 42 was deemed patent-eligible because it provided a specific improvement over prior art systems by allowing remote users to share information in real time in a standardized format regardless of the format in which the information was input by the user (*see* 2019 Eligibility Examples, 18–19). Thus, exemplary claim 1 of example 42 addressed technological difficulties related to incompatible computer formats, disparate geographic locations, and the untimely sharing of information (*see id.* at 17). Appellants have not demonstrated that the present claims provide such a specific improvement over prior art systems.

Turning to step two of the *Mayo/Alice* framework, Appellants argue that even if the claims are directed to an abstract idea, the claims are nonetheless patent-eligible because they recite significantly more than an abstract idea in light of *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) and *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) (Reply Br. 10–16). However, we can find no parallel between the present claims and those at issue in either *BASCOM* or *Amdocs*.

Appellants argue that independent claim 6, like *BASCOM*, is patent-eligible because it "includes concrete steps regarding converting current statuses and historical audits to generate aggregated tracking data, which are

then used to calculate progress curves" (Reply Br. 12). We do not agree,
however, that *BASCOM* is sufficiently analogous to control the outcome
here.

In *BASCOM*, the Federal Circuit held that the second step of the
Mayo/Alice framework was satisfied because the claimed invention
"represents a 'software-based invention[ ] that improve[s] the performance
of the computer system itself.'" *BASCOM*, 827 F.3d at 1351 (stating that
like *DDR Holdings*, where the patent "claimed a technical solution to a
problem unique to the Internet," the patent in *BASCOM* claimed a
"technology-based solution . . . to filter content on the Internet that
overcomes existing problems with other Internet filtering systems . . .
making it more dynamic and efficient") (citations omitted). Here,
Appellants argue that independent claim 6 is patent-eligible because it
"includes concrete steps regarding converting current statuses and historical
audits to generate aggregated tracking data, which are then used to calculate
progress curves" (Reply Br. 12). The difficulty with Appellants' argument
is that Appellants do not persuade us that "converting current statuses and
historical audits to generate aggregated tracking data, which are then used to
calculate progress curves" is a technological improvement, as opposed to an
improvement in a business practice for which generic computer components
are used in their ordinary capacity (*see* Spec. ¶¶ 14, 28, 30).

We also see no parallel between the present claims and the claims in
Amdocs (*see* Reply Br. 15–16). In *Amdocs*, the Federal Circuit held the
claim was patent eligible because the claim entails an unconventional
technological solution (enhancing data in a distributed fashion) to a
technological problem (massive record flows which previously required

massive databases). Although the solution required generic components, the court determined that "the claim's enhancing limitation necessarily requires that these generic components operate in an unconventional manner to achieve an improvement in computer functionality" and that the "enhancing limitation depends not only upon the invention's distributed architecture, but also depends upon the network devices and gatherers — even though these may be generic — working together in a distributed manner." *Amdocs*, 841 F.3d at 1300–01.

Appellants argue that independent claim 6 is patent-eligible in light of *Amdocs* because its "arrangement is an 'unconventional technological solution' to the problems of time lag in tracking the progress of a clinical trial and a lack of accurate information" (Reply Br. 16). However, Appellants' argument is not persuasive because Appellants do not identify any "distributed architecture" comparable to that in *Amdocs* or otherwise establish that the generic components recited in the pending claims operate in an unconventional manner.

Appellants further argue the Examiner has failed to establish that the additional elements of independent claim 6 are well-understood, routine, and conventional to a skilled artisan in the relevant field (Supp. Br. 3 (citing *Berkheimer v. HP, Inc.*, 881 F.3d 1360 (Fed. Cir. 2018))).

Appellants' argument is not persuasive, at least because it could not be clearer from *Alice*, that under step two of the *Mayo/Alice* framework (i.e., step 2B), the elements of each claim are considered both individually and "as an ordered combination" to determine whether the additional elements, i.e., the elements *other* than the abstract idea itself, "transform the nature of the claim" into a patent-eligible application. *Alice Corp.*,

573 U.S. at 217. *See Mayo*, 566 U.S. at 72–73 (requiring that "a process that focuses upon the use of a natural law also contain *other* elements or a combination of elements, sometimes referred to as an 'inventive concept,' sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the natural law itself" (emphasis added)). Stated differently, the inventive concept under step two of the *Mayo/Alice* test cannot be the abstract idea itself:

> It is clear from *Mayo* that the "inventive concept" cannot be the abstract idea itself, and *Berkheimer* . . . leave[s] untouched the numerous cases from this court which have held claims ineligible because the only alleged "inventive concept" is the abstract idea.

Berkheimer v. HP, Inc., 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring). *See also BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290–91 (Fed. Cir. 2018) ("Our precedent has consistently employed this same approach. If a claim's only 'inventive concept' is the application of an abstract idea using conventional and well-understood techniques, the claim has not been transformed into a patent-eligible application of an abstract idea.").

As discussed above, there is no indication here that the operations, recited in independent claim 6, require any specialized computer or inventive computer components – the Specification indicates just the opposite (*see, e.g.*, Spec. ¶¶ 14, 26–34). Here, the only claim element in independent claim 6 beyond the abstract idea is the claimed "processor," i.e., a generic component, operating in its routine and ordinary capacity to collect, convert, calculate, and transmit data.

We are not persuaded, on the present record, that the Examiner erred in rejecting independent claim 6 under 35 U.S.C. § 101. Therefore, we

sustain the Examiner's rejection of claim 6, and claims 8–14, which fall with independent claim 6.

DECISION

The Examiner's rejection of claims 6 and 8–14 under 35 U.S.C. § 101 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED