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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NATHANIAL B. FINDLAY, JAY PARKINSON,
SEAN KHOZIN, STEVEN FERGUSON, MARTIN-PIERRE ROY,
PHILIPPE LAROUCHE, and KEVIN BOUCHARD

Appeal 2017-005613
Application 12/468,563¹
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ According to Appellants, the real party in interest is MYCA HEALTH, INC. (Appeal Br. 2).

STATEMENT OF THE CASE²

Nathaniel B. Findlay, Jay Parkinson, Sean Khozin, Steven Ferguson, Martin-Pierre Roy, Philippe Larouche, and Kevin Bouchard (“Appellants”) seek review under 35 U.S.C. § 134 of a final rejection of claims 1–10, 13–17, 19–22, 24–30, and 52–60, the only claims pending in the Application on Appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We affirm.

The Appellants invented providing a multi-dimensional contextual platform for managing a medical practice that uses social network tools to enhance communication between the doctor and patients. Spec., para. 2.

An understanding of the invention can be derived from a reading of exemplary claim 52, which is reproduced below (bracketed matter and some paragraphing added).

52. A computer-implemented method of providing a multi-dimensional contextual platform for managing a medical practice, the method being implemented by a system comprising at least one networked computing device having one or more physical processors programmed by computer program instructions that, when executed by the one or more physical processors, cause the networked computing device to perform the method, the method comprising:

² Our Decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed September 21, 2016) and Reply Brief (“Reply Br.,” filed February 16, 2017), and the Examiner’s Answer (“Ans.,” mailed December 16, 2016), and Final Action (“Final Act.,” mailed April 21, 2016).

- [1] storing, in a database, medical record information of a plurality of patients;
 - [2] generating, by the at least one networked computing device, a patient interface to be used by patients to interact with the system;
 - [3] generating, by the at least one networked computing device, an avatar-based doctor interface that displays a first avatar that depicts a first actual patient of the medical practice, a second avatar that depicts a second actual patient of the medical practice, and at least portions of the medical record information for the first and second actual patients of the medical practice;
 - [4] facilitating, by the at least one networked computing device, online communications between the patient interface and the avatar-based doctor interface;
 - [5] causing, by the at least one networked computing device, a plurality of methods by which the first actual patient may interact with a doctor for at least one available appointment to be displayed via the patient interface;
 - [6] receiving, by the at least one networked computing device, a selection of one or more of the plurality of methods by which the first actual patient may interact with the doctor;
 - [7] scheduling, by the at least one networked computing device, the available appointment, wherein the first actual patient is scheduled to interact with the doctor via the selected one or more of the plurality of methods for the at least one available appointment;
 - [8] obtaining, by the at least one networked computing device, a first medical record associated with the first actual patient;
 - [9] identifying, by the at least one networked computing device, at least one characteristic of the first actual patient based on the first medical record;
- and
- [10] automatically grouping, by the at least one networked computing device, the first actual patient into a first patient group based on the at least one characteristic,

wherein the first patient group comprises a plurality of actual patients that share in common the at least one characteristic with one another;

and

[11] obtaining, by the at least one networked computing device, information related to the first patient group;

[12] receiving, by the at least one networked computing device, an indication from the doctor to provide the information related to the first patient group to the plurality of actual patients;

and

[13] causing, by the at least one networked computing device, the information related to the first patient group to be provided to the plurality of actual patients.

The Examiner relies upon the following prior art:

Kehr	US 2003/0036683 A1	Feb. 20, 2003
Camarda	US 6,587,829 B1	July 1, 2003
Flack	US 2003/0125983 A1	July 3, 2003
Ilsen	US 6,757,898 B1	June 29, 2004
Albro	US 2009/0106051 A1	Apr. 23, 2009
Boldyga	US 2009/0106313 A1	Apr. 23, 2009
Schoenberg	US 2009/0112623 A1	Apr. 30, 2009
DeBelser	US 2009/0270833 A1	Oct. 29, 2009
Kuo	US 2010/0106518 A1	Apr. 29, 2010
Siegel	US 2010/0217641 A1	Aug. 26, 2010

Claims 1–10, 13–17, 19–22, 24–30, and 52–60 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1–8, 13–15, 24, 25, 29, 52, and 60 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, and Kehr.

Claims 9, 10, and 19–22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Flack.

Claims 16 and 17 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and DeBelser.

Claim 26 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Siegel.

Claims 27 and 28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Boldyga.

Claim 30 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Kuo.

Claims 53–55 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, and Boldyga.

Claims 56 and 57 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, and Kehr.

Claim 58 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Kehr, and Camarda.

Claim 59 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, and Kuo.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of results desired.

The issues of obviousness turn primarily on whether the references are analogous art.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to Claim Construction

01. The disclosure contains no lexicographic definition of “avatar.”

Facts Related to Appellants’ Disclosure

02. According to an aspect of the invention, the multi-dimensional contextual platform may depict patients and doctors as avatars, personalizing doctor-patient online interactions. An avatar may include a real (e.g., photo) or virtual representation of a user (e.g., doctor, patient, and/or other individual or entity interacting with the system). Representations may include, among other things, an image (e.g., photograph, graphic, etc.), text, color, audio file, and/or any combination of representations. Spec., para. 59.

Facts Related to the Prior Art

Ilsen

01. Ilsen is directed to an automated system of electronic communications between a health-care or medical service provider and his/her patient, for the purpose of providing a simple, reliable and effective interface for rapidly exchanging inquiries, responses, data, services and information between the both parties for the mutual benefit and satisfaction of each. Ilsen 1:6–12.
02. Ilsen describes a communication system, the Electronic Provider-Patient Interface (ePPI), for providing automated,

electronic communications between at least one health-care provider and a plurality of users of the health-care provider, wherein the communications occur over a communications network through a provider/patient interface. Ilsen 4:2–9.

Albro

03. Albro is directed to improving organizational efficiencies of delivering health care in an ambulatory health care setting by providing comprehensive, intuitive, patient focused, and user driven workflow tools. Albro, para. 3.

04. Albro describes capturing a patient image and associating that image with a patient in an application database and automatically recording the patient as present in a scheduling system. Albro, para. 34.

Schoenberg

05. Schoenberg is directed to connecting consumers with service providers. Schoenberg, para. 2.

06. Schoenberg describes an animated representation of a consumer to interact with an animated representation of a point of service rendered in a user interface to select characteristics of a medical service provider; the selected characteristics of the medical service provider are received; an available medical service provider is identified based at least in part on the selected characteristics; and a communication channel is provided to establish an electronic, real-time communication between the

consumer and the identified medical service provider.

Schoenberg, para. 7.

07. Schoenberg describes establishing a follow-up or prescheduled engagement. Once an engagement is established or as one is completed, the two parties can instruct the system to pursue the established engagement or a follow-up engagement at pre-defined schedules or at future time points. Schoenberg, para. 50.
08. Schoenberg describes allowing consumers to engage provider's e.g., health professionals "on demand" based on provider availability. Engagements can be established in various ways. Passive browsing—1. Reference health content is accessed on the brokerage's website. 2. Health Risk Assessments—The system acquires information from consumers through automated interaction (e.g., rules-based interaction) in order to crystallize their needs (e.g., medical risks) and better direct them. 3. Asynchronous correspondence—The lowest level of true provider interaction is by way of secure messaging. 4. Synchronous correspondence—Several forms of synchronous correspondence allow the consumer and the provider to engage in real-time discussions. 5. Synchronous text correspondence—This may be referred to as a "Chat" module where both sides of the engagement type their entries in response to each others' entries. The form of communication may be entirely text based but is still a live communication. Examples include instant messaging and SMS messaging. 6. Web-based teleconferencing—The use of

broadband network connections allows for real-time voice transmission over the Internet in what is referred to as full duplex (i.e., both voice channels are open at the same time). 7.

Telephonic conferencing—Providers are linked to the servers via VoIP, other data-network-based voice systems, or their own telephones. 8. Video conferencing—The system can support video conferencing to allow consumers to exhibit physical findings to providers if such disclosure is needed. Schoenberg, paras. 64–73.

09. Schoenberg describes avatars, or in some implementations cartoon-type characters that can facilitate the transfer of information between the consumer and the system. Such animated representations can, for example, reduce the level of literacy and/or language proficiency required to use the system to identify a medical service provider. Accordingly, the use of animated representations facilitates the use of the brokerage system as a tool to extend healthcare to traditionally underserved socio-economic populations. Additionally or alternatively, the use of animated representations can reduce the amount time required for a consumer to use the brokerage system to find a medical service provider having one or more desired characteristics. Schoenberg, para. 178.

Kehr

10. Kehr is directed to an improved health status and pharmaceutical compliance monitoring system. Kehr, para. 2.

11. Kehr describes a medical information management system and database. It provides for a number of enhanced features including: mass customization of medical protocols; time-and-event driven medical treatment plan; risk-stratified triage and medical intervention system; self-selected synchronized database-linked medical monitoring system; pharmacoeconomic analysis system; creation and self-selection of musical alarms for monitoring; streaming video and pictorial representation on monitoring device; a system for promoting enhanced validity in pharmaceuticals and drug package inserts; a system for mass customizing information device functions and features; and a dynamic, mass customizable, interactive screen and voice system for monitoring. Kehr, para. 6.
12. Kehr describes a sub-population or group of patients as any group of patients that share one or more common characteristic that may affect or modify their medical condition or treatment protocols. Kehr, para. 120.

DeBelser

13. DeBelser is directed to software useable in conjunction with a medical infusion pump. DeBelser, para. 2.

ANALYSIS

We initially construe the limitation “avatar” in the claims. This term is not lexicographically defined. The Specification does state that it encompasses any representation of a user, including textual representations. We, therefore, construe “avatar” as any representation of a user, including textual representations. In particular, textual field names in generic

interfaces denoting where a user is to enter data is a textual representation of a user insofar as it represents the user at the time data is entered into that field and is, therefore, within the scope of this limitation. Thus, almost all generic user interfaces include such avatars.

Claims 1–10, 13–17, 19–22, 24–30, and 52–60 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more
STEP 1³

Claim 52, as a method claim, nominally recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. The issue before us is whether it is directed to a judicial exception without significantly more.

STEP 2

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us? To answer that question, . . . 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. [The Court] described step two of this

³ For continuity of analysis, we adopt the steps nomenclature from *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019).

analysis as a 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.”

Alice Corp. v. CLS Bank Int’l, 573 U.S. 208, 217–18 (2014) (citations omitted) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)). To perform this test, we must first determine what the claims are directed to. This begins by determining whether the claims recite one of the judicial exceptions (a law of nature, a natural phenomenon, or an abstract idea). Then, if claims recite a judicial exception, determining whether the claims at issue are directed to the recited judicial exception, or whether the recited judicial exception is integrated into a practical application of that exception, *i.e.*, that the claims “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.” 2019 Guidance, 84 Fed. Reg. at 54. If the claims are directed to a judicial exception, then finally determining whether the claims provide an inventive concept because the additional elements recited in the claims provide significantly more than the recited judicial exception.

STEP 2A Prong 1

Method claim 52 recites: storing medical record information, generating a patient interface, generating an avatar-based doctor interface, facilitating online communications, causing a plurality of methods by which the first actual patient may interact with a doctor for at least one available appointment to be displayed, receiving a selection of one or more of the plurality of methods, scheduling an appointment, obtaining a first medical

record, identifying at least one characteristic, obtaining information, receiving an indication, and providing information.

Generating interfaces is no more than generating data that presents the interface. The interface operation itself is part and parcel of generic computer operation. Causing methods of interaction is again no more than generating data that presents the interface. Such methods are defined by the data so presented and the choices available for interaction in a generic interface. For example, generic graphic user interfaces provide check boxes, list boxes, text boxes, radio buttons and other such methods. Using these is part of using a generic computer. Identifying data is rudimentary data analysis. Scheduling an appointment is data reception, as is obtaining information. Providing information is data transmission.

Thus, claim 52 recites storing, generating, transmitting, receiving, and analyzing data. None of the limitations recite technological implementation details for any of these steps, but instead recite only results desired by any and all possible means.

From this we see that claim 52 does not recite the judicial exceptions of either natural phenomena or laws of nature.

Under Supreme Court precedent, claims directed purely to an abstract idea are patent in-eligible. As set forth in the Revised Guidance, which extracts and synthesizes key concepts identified by the courts, abstract ideas include (1) mathematical concepts⁴, (2) certain methods of organizing

⁴ See, e.g., *Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); *Mackay Radio & Telegraph Co. v. Radio Corp. of Am.*, 306 U.S. 86, 94 (1939); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018).

human activity⁵, and (3) mental processes⁶. Among those certain methods of organizing human activity listed in the Revised Guidance are managing personal behavior or relationships or interactions between people. Like those concepts claim 52 recites the concept of coordinating information among people. Specifically, claim 52 recites operations that would ordinarily take place in advising one to scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group. The advice to scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group involves making an appointment, which is a social act, and providing information, which is an act ordinarily performed in the stream of interactions with people. For example, claim 52 recites “scheduling . . . the available appointment,” which is an activity that would take place whenever one is managing future interactions among people. Similarly, claim 1 recites “obtaining a . . . medical record” and “identify[ing] at least one characteristic of the first actual patient,” which are also characteristics of managing relationships between medical provider and patient.

⁵ See, e.g., *Bilski*, 561 U.S. at 628; *Alice*, 573 U.S. at 219–20; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1383 (Fed. Cir. 2017); *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1160–61 (Fed. Cir. 2018).

⁶ See, e.g., *Benson*, 409 U.S. at 67; *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–72 (Fed. Cir. 2011); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

The Examiner determines the claims to be directed to series of step that can be perform manually, hence claims are abstract idea under example of organizing human activities. Final Act. 3.

The preamble to claim 52 recites that it is a method of providing a multi- dimensional contextual platform for managing a medical practice. The steps in claim 52 result in scheduling an appointment and providing information absent any technological mechanism other than a conventional computer for doing so.

As to the specific limitations, limitations 1, 6, 8, 11, and 12 recite conventional data gathering. Limitation 13 recites conventional data output. Limitations 2–5 recite conventional computer interface operations to present an interface and gather data. Limitations 7, 9, and 10 recite generic analyzing of data, which advise one to apply generic functions to get to these results. The limitations, thus, recite advice for scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group. To advocate scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group is conceptual advice for results desired and not technological operations.

The Specification at paragraph 2 describes the invention as relating to a multi-dimensional contextual platform for managing a medical practice that uses social network tools to enhance communication between the doctor and patients. A multi-dimensional contextual platform is just that, a generic computer interface. Characterizing the interface as a multi-dimensional

contextual platform simply characterizes the data passing through the interface. Similarly, characterizing the parts of the interfaces as social network tools does no more than characterize the data, as no structural limitations, or even technological software limitations, are recited. Thus, all this intrinsic evidence shows that claim 52 is directed to scheduling a medical appointment and providing information, i.e. coordinating information among people. This is consistent with the Examiner's determination.

This in turn is an example of managing personal behavior or relationships or interactions between people as a certain method of organizing human activity because coordinating information among people is a form of managing personal behavior or relationships or interactions between people.

The concept of coordinating information among people by scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group is a conceptual idea for a metaphorical approach to this. The steps recited in claim 52 are conceptual parts of this idea.

Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (Process of taking plural data sets and combining them into a single data set.); *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (2014) (Data collection, recognition, and storage.); *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (2016) (Features such

as a customized user interface do not convert the abstract idea of delivering media content into a concrete solution to a problem.).

Alternately, this is an example of concepts performed in the human mind as mental processes because the steps of storing, generating, transmitting, receiving, and analyzing data mimic human thought processes of observation, evaluation, judgment, and opinion, perhaps with paper and pencil, where the data interpretation is perceptible only in the human mind. *See In re TLI Commc'ns LLC Pat. Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 52, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data storage, generation, transmission, reception, and analysis and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (Finding claims not abstract because they “focused on a specific asserted improvement in computer animation.”). As such, claim 52 is directed to storing, generating, transmitting, receiving, and analyzing data, and not a technological implementation or application of that idea.

From this we conclude that at least to this degree, claim 52 is directed to coordinating information among people by scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group.

STEP 2A Prong 2

The next issue is whether claim 52 not only recites, but is more precisely directed to this concept itself or whether it is instead directed to

some technological implementation or application of, or improvement to, this concept i.e. integrated into a practical application.⁷

At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. At some level, “all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. “[A]pplication[s]” of such concepts “ ‘to a new and useful end,’ ” we have said, remain eligible for patent protection.

Accordingly, in applying the § 101 exception, we must distinguish between patents that claim the “ ‘buildin[g] block[s]’ ” of human ingenuity and those that integrate the building blocks into something more.

Alice, 573 U.S. at 217 (citations omitted).

Taking the claim elements separately, the operation performed by the computer at each step of the process is expressed purely in terms of results, devoid of implementation details. Steps 1, 6, 8, 11, and 12 are pure data gathering steps. Limitations describing the nature of the data do not alter this. Step 13 is insignificant post solution activity, such as storing, transmitting, or displaying the results. Steps 2–5, 7, 9, and 10 recite generic computer processing expressed in terms of results desired by any and all possible means and so present no more than conceptual advice. All purported inventive aspects reside in how the data is interpreted and the results desired, and not in how the process physically enforces such a data interpretation or in how the processing technologically achieves those results.

⁷ See, e.g., *Alice*, 573 U.S. at 223 (discussing *Diamond v. Diehr*, 450 U.S. 175 (1981)).

Viewed as a whole, Appellants' claim 52 simply recites the concept of coordinating information among people by scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group as performed by a generic computer. This is no more than conceptual advice on the parameters for this concept and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

Claim 52 does not, for example, purport to improve the functioning of the computer itself. Nor does it affect an improvement in any other technology or technical field. The Specification spells out different generic equipment⁸ and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of coordinating information among people by scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group under different scenarios. It does not describe any particular improvement in the manner a computer functions. Instead, claim 52 at issue amounts to nothing significantly more than an instruction to apply coordinating information among people by scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group using some unspecified,

⁸ The Specification describes a personal computer, portable computer, personal digital assistant (PDA), workstation, web-enabled mobile phone, WAP device, web-to-voice device, or other device. Spec., para. 52.

generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

None of the limitations reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field, applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease or medical condition, implements a judicial exception with, or uses a judicial exception in conjunction with, a particular machine or manufacture that is integral to the claim, effects a transformation or reduction of a particular article to a different state or thing, or applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception.

We conclude that claim 52 is directed to achieving the result of coordinating information among people by advising one to scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group as distinguished from a technological improvement for achieving or applying that result. This amounts to managing personal behavior or relationships or interactions between people, which fall within certain methods of organizing human activity that constitute abstract ideas. The claim does not integrate the judicial exception into a practical application.

STEP 2B

The next issue is whether claim 52 provides an inventive concept because the additional elements recited in the claim provide significantly more than the recited judicial exception.

The introduction of a computer into the claims does not generally alter the analysis at *Mayo* step two.

the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “ ‘to a particular technological environment.’ ” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the pre-emption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 573 U.S. at 223–24 (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer for storing, generating, transmitting, receiving, and analyzing data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are generic,

routine, conventional computer activities that are performed only for their conventional uses. *See Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *see also In re Katz Interactive Call Processing Pat. Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming.”). None of these activities are used in some unconventional manner nor do any produce some unexpected result. Appellants do not contend they invented any of these activities. In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “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.” *SAP Am., Inc. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellants’ claim 52 add nothing that is not already present when the steps are considered separately. The sequence of data storage-generation-transmission-reception-analysis is equally generic and conventional. *See Ultramercial*, 772 F.3d at 715 (Sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction.); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (Sequence of data retrieval, analysis, modification, generation, display, and transmission.); *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017)

(Sequence of processing, routing, controlling, and monitoring.). The ordering of the steps is, therefore, ordinary and conventional.

We conclude that claim 52 does not provide an inventive concept because the additional elements recited in the claim do not provide significantly more than the recited judicial exception.

REMAINING CLAIMS

Claim 52 is representative. The other independent method claim 54 is substantially similar at least as regards this analysis. The remaining method claims merely describe process parameters. We conclude that the method claims at issue are directed to a patent-ineligible concept itself, and not to the practical application of that concept.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] . . . against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

Alice, 573 U.S. at 226 (citation omitted). As a corollary, the claims are not directed to any particular machine.

LEGAL CONCLUSION

From these determinations we further determine that the claims do not recite an improvement to the functioning of the computer itself or to any other technology or technical field, a particular machine, a particular transformation, or other meaningful limitations. From this we conclude the claims are directed to the judicial exception of the abstract idea of certain methods of organizing human activity as exemplified by coordinating

information among people by scheduling a patient-doctor appointment using an avatar-based communication interface and providing information related to one group of patients having some common characteristic to another patient group, without significantly more.

APPELLANTS' ARGUMENTS

As to Appellants' Appeal Brief arguments, we adopt the Examiner's determinations and analysis from Final Action 2–5 and Answer 4–8 and reach similar legal conclusions. We now turn to the Reply Brief.

We are not persuaded by Appellants' argument that “the Examiner's reliance on *Alice* or *Bilski* is legally improper.” These cases form the framework for abstract idea analysis, as we set forth *supra*.

We are not persuaded by Appellants' argument that the claims clearly recite a computer system, which is not merely added posthoc to a fundamental economic practice or mathematical equation. Furthermore, the appealed claims are directed to a specific implementation of a solution to a problem in the medical platform software arts in which diverse medical and communication systems with disparate sources of information make medical practice management difficult.

Reply Br. 3. Simply reciting a computer system does not render an abstract idea non-abstract. *See Alice, supra*. The implementation recited is conceptual only and is specific only in the sense it is specified using words. No technological implementation is recited.

We are not persuaded by Appellants' argument that the claims are analogous to those in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). Reply Br. 3–4. The claims differ from those found patent eligible in *Enfish*, where the claims were “specifically directed to a self-referential table for a computer database.” *Enfish*, 822 F.3d 1327, 1337

(Fed. Cir. 2016). The claims, thus, were “directed to a specific improvement to the way computers operate” rather than an abstract idea implemented on a computer. *Enfish*, 822 F.3d at 1336. Here, by contrast, the claims are not directed to an improvement in the way computers operate. Though the claims purport to accelerate the process of making an appointment and conveying information, our reviewing court has held that speed and accuracy increases stemming from the ordinary capabilities of a general purpose computer “do[] 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). Instead, the claims are more analogous to those in *FairWarning*, wherein claims reciting “a few possible rules to analyze the audit log data” were found directed an abstract idea because they asked “the same questions (though perhaps phrased with different words) that humans in analogous situations detecting fraud have asked for decades.” *FairWarning*, 839 F.3d at 1094, 1095.

We are not persuaded by Appellants’ argument that the claims contain an inventive concept that is also found in the specific ordered combination of the limitations, similar to the Federal Circuit's findings in *Bascom* (*Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)). Reply Br. 4. Initially, we remind Appellants that *Bascom* did not find claims eligible on the substance, but rather that the Appellants did not provide sufficient evidence to support a 12(b)(6) motion to dismiss in which facts are presumed in the non-movant’s favor.

The key fact in *Bascom* was the presence of a structural change in “installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This

design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server.” *Bascom*, 827 F.3d at 1350.

The instant claims have no analogous structural benefit.

We are not persuaded by Appellants’ argument that the Examiner fails to present a prima facie case as to the dependent claims. Reply Br. 5. As we determine *supra*, each dependent claim merely adds further conceptual parameters, rather than technological implementation details.

Claims 1–8, 13–15, 24, 25, 29, 52, and 60 rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, and Kehr

As to Appellants’ Appeal Brief obviousness arguments in support of all claims, except for claims 17 and 30, we adopt the Examiner’s determinations and analysis from Final Action 7–32 and Answer 9–17 and reach similar legal conclusions. We now turn to the Reply Brief.

We are not persuaded by Appellants’ argument that “Kehr, De[B]elser, Siegel, and [Boldyga] each constitute non-analogous art.” Reply Br. 5. Claim 1 is a method “for providing a multi-dimensional contextual platform for managing a medical practice.” Thus, the inventor field of endeavor is medical practice management. Ilsen is directed to an automated system of electronic communications between a health-care or medical service provider and his/her patient. Albro is directed to improving organizational efficiencies of delivering health care. Schoenberg is directed to connecting consumers with service providers. Kehr is directed to an improved health status and pharmaceutical compliance monitoring system. Thus, each of the references is pertinent to the inventor field of endeavor.

We are not persuaded by Appellants’ argument that “Schoenberg does not teach or suggest a plurality of methods by which to interact with a doctor

and then scheduling an available appointment based on a selected method.”
Reply Br. 6 (emphasis omitted). Appellants contend that Schoenberg cited portions (paragraphs 50–57)

relate to “standby engagements” in which a patient is added to a queue to interact with a doctor and is notified when the doctor will be available online through the system. At best, the relied upon portions of Schoenberg describe allowing a patient to specify which method of communication to receive such notification, not allowing a patient to specify which method of communication will be used to interact with the doctor at a scheduled time as claimed.

Reply Br. 6 (emphasis omitted). The limitation at issue is “wherein the first actual patient is scheduled to interact with the doctor via the selected one or more of the plurality of methods for the at least one available appointment.” Schoenberg describes scheduling following each appointment. Schoenberg then describes 8 different selectable forms of communication. The claim does not recite that the form of communication is specified in data representing the appointment.

We are not persuaded by Appellants’ argument that “Kehr does not teach or suggest automatically grouping patients as claimed.” Reply Br. 6 (emphasis omitted). Kehr describes a sub-population or group of patients as any group of patients that share one or more common characteristic that may affect or modify their medical condition or treatment protocols. Irrespective of how Kehr builds up its group, it was at least predictable to build a group that is based on a common data element by searching for records meeting that criteria.

Claims 9, 10, and 19–22 rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Flack

These claims are not separately argued.

Claims 16 and 17 rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and DeBelser

Claim 16 is not separately argued. As to claim 17, however, we are persuaded by Appellants' argument that DeBelser fails to describe processing payment.

Claim 26 rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Siegel

This claim is not separately argued.

Claims 27 and 28 rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Boldyga

These claims are not separately argued.

Claim 30 rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Kuo

We are persuaded by Appellants' argument that Kuo fails to describe granting a doctor access to medical records.

Claims 53–55 rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, and Boldyga

These claims are not separately argued.

Claims 56 and 57 rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, and Kehr

These claims are not separately argued.

*Claim 58 rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen,
Albro, Kehr, and Camarda*

This claim is not separately argued.

*Claim 59 rejected under 35 U.S.C. § 103(a) as unpatentable over Ilsen,
Albro, and Kuo*

This claim is not separately argued.

CONCLUSIONS OF LAW

The rejection of claims 1–10, 13–17, 19–22, 24–30, and 52–60 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

The rejection of claims 1–8, 13–15, 24, 25, 29, 52, and 60 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, and Kehr is proper.

The rejection of claims 9, 10, and 19–22 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Flack is proper.

The rejection of claim 16 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and DeBelser is proper.

The rejection of claim 17 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and DeBelser is *improper*.

The rejection of claim 26 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Siegel is proper.

The rejection of claims 27 and 28 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Boldyga is proper.

The rejection of claim 30 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Schoenberg, Kehr, and Kuo is *improper*.

Appeal 2017-005613
Application 12/468,563

The rejection of claims 53–55 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, and Boldyga is proper.

The rejection of claims 56 and 57 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, and Kehr is proper.

The rejection of claim 58 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, Kehr, and Camarda is proper.

The rejection of claim 59 under 35 U.S.C. § 103(a) as unpatentable over Ilsen, Albro, and Kuo is proper.

DECISION

The rejection of claims 1–10, 13–17, 19–22, 24–30, and 52–60 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED