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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* MARIT SOLHEIM WITT

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Appeal 2017-009450  
Application 13/760,715  
Technology Center 3700

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Before MICHAEL L. HOELTER, JEREMY M. PLENZLER, and  
BRANDON J. WARNER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 2–8, 15–20, and 30–41 under 35 U.S.C. § 101. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Alpha Element Institute, LLC. Appeal Br. 3.

### CLAIMED SUBJECT MATTER

Claims 5, 30–34, and 36 are independent. Claims 2–4, 6–8, 15–20, 35, and 37–41 depend from claim 5, 30, or 36. Claim 5 is illustrative of the claims on appeal, and is reproduced below.

5. A method of analyzing the personality of an individual having a face, the method comprising:

holding at least four different shapes near the face of the individual;

assessing a relationship of the individual's face to the at least four shapes, the four shapes comprising a circular shape, an oval shape, triangular shape, and a rectangular shape;

selecting one of the four shapes;

identifying a mind-body temperament correlated to the selected shape, correlation of the mind-body temperament and the selected shape having been predetermined; and

informing the individual of the identified mind-body temperament.

### OPINION

The Examiner determines that the claims are patent-ineligible under 35 U.S.C. § 101. Non-Final Act. 2–4. Appellant disputes the Examiner's rejection, focusing mainly on whether the claims recite limitations that are not well-understood, routine, and conventional, and addressing only the features recited in the independent claims. Appeal Br. 8–18. We have considered each of Appellant's arguments when reaching our decision below.

Section 101 of the Patent Act provides that “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof” is patent eligible. 35 U.S.C. § 101. The claims

fall within the literal scope of this provision because each claim recites a process.

The Supreme Court, however, has long recognized an implicit exception to this section: “Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l.*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). To determine whether a claim falls within one of these excluded categories, the Court has set out a two-part framework. The framework requires us first to consider whether the claim is “directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “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.” *Alice*, 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78, 79 (2012)). That is, we examine the claims for an “inventive concept,” “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*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

Under the 2019 Eligibility Guidance, to decide whether a claim is “directed to” an abstract idea, we evaluate whether the claim (1) recites an abstract idea grouping listed in the guidance *and* (2) fails to integrate the recited abstract idea into a practical application. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 51 (Jan. 7, 2019) (“2019 Eligibility Guidance”). If the claim is “directed to” an abstract idea, as noted above, we then determine whether the claim recites an inventive

concept. The guidance explains that, when making this determination, we should consider whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry.” 2019 Eligibility Guidance, 84 Fed. Reg. at 56.

*Step 2(A), Prong 1*

The Examiner lists the steps recited in the claims and explains that “[t]hese limitations simply describe a process of collecting and analyzing data to identify a person’s personality” and “are akin to a longstanding human organizing activity.” Non-Final Act. 2. That is, the Examiner determines that the claims recite subject matter that falls within an abstract idea grouping listed in the guidance: “Certain methods of organizing human activity.” *See* 2019 Eligibility Guidance, 84 Fed. Reg. at 52.

Appellant does not provide any specific argument addressing whether the claims recite an abstract idea. Rather, Appellant contends, generally, that “[a]nalyzing the personality of an individual has not been identified by a single court as an abstract idea and is not similar to any concept that a court has identified as an abstract idea,” without addressing the particular rejection made by the Examiner. Appeal Br. 8–9. Regardless of whether a court has identified the particular endeavor of analyzing the personality of an individual as an abstract idea, however, Appellant offers no explanation, and does not even allege that such a process is not a method of organizing human activity as determined by the Examiner.

Moreover, the claims recite another abstract idea grouping listed in the guidance: “Mental processes—concepts performed in the human mind

(including an observation, evaluation, judgment, opinion).” *See* 2019 Eligibility Guidance, 84 Fed. Reg. at 52. Those mental processes from claim 5 include:

assessing a relationship of the individual’s face to the at least four shapes, the four shapes comprising a circular shape, an oval shape, triangular shape, and a rectangular shape;

selecting one of the four shapes;

identifying a mind-body temperament correlated to the selected shape, correlation of the mind-body temperament and the selected shape having been predetermined.

Claim 30 is similar. Although reciting numerous additional steps, the majority of those steps are also mental processes, which include:

correlating the first set of data with at least one mind-body temperament selected from a group consisting of at least four different mind-body temperaments;

correlating the second set of data with at least one mind-body temperament selected from the group of at least four different mind-body temperaments;

analyzing the correlation between the at least one mind-body temperament associated with the first set of data and with the at least one mind-body temperament associated with the second set of data;

determining a perceived primary mind-body temperament of the individual, the determining comprising determining to which mind-body temperament the first set of data exhibits a greatest degree of correlation and assigning the determined mind-body temperament as a first perceived personality style, and determining to which mind-body temperament the second set of data exhibits a greatest degree of correlation and assigning the determined mind-body temperament as a second perceived personality style;

...

selecting a shade of red from the at least four shades of red;

identifying a mind-body temperament correlated to the selected red shade, correlation of the mind-body temperament and the selected red shade having been predetermined;

...

selecting a colored pattern from the at least four different colored patterns;

identifying a mind-body temperament correlated to the selected colored pattern, correlation of the mind-body temperament and the selected colored pattern having been predetermined;

...

selecting a metal palette from the at least four different metal palettes;

identifying a mind-body temperament correlated to the selected metal palette, correlation of the mind-body temperament and the selected metal palette having been predetermined;

...

selecting a color palette from the at least two different color palettes for an individual;

identifying a mind-body temperament correlated to the first selected color palette, correlation of the mind-body temperament and the first selected color palette having been predetermined, the identified mind-body temperament correlated to the first selected color palette being a primary mind-body temperament of the individual;

comparing the perceived first and second perceived personality styles with the primary mind-body temperament;

determining whether there is a balance or an imbalance in the comparison.

Claims 31–34 and 36 recite limitations similar to those found in claims 5 and 30. For simplicity, we do not reproduce those claims, with the

understanding that the similar limitations in those claims are considered mental processes as well.

Because it is self-evident that the steps reproduced above are “concepts performed in the human mind (including an observation, evaluation, judgment, opinion),” the claims recite an abstract idea.

*Step 2(A), Prong 2*

The remaining limitations (those not included in the recited abstract idea noted above) are no more than insignificant extra-solution activity, which cannot integrate the mental processes into a practical application. *See* 2019 Eligibility Guidance, 84 Fed. Reg. at 55. Those limitations include “holding” various objects to facilitate comparison to an individual (claims 5, 30–34, 36), “obtaining . . . data” (claim 30), and “informing the individual of the [outcome]” (claims 5, 30–34, 36).

Accordingly, the claims are directed to an abstract idea.

*Step 2(B)*

Because we agree with the Examiner that the claims are directed to an abstract idea, we next determine whether the claims provide an inventive concept. *See* 2019 Eligibility Guidance, 84 Fed. Reg. at 56. Without explanation, Appellant contends that “the Examiner provides no evidence establishing that these limitations are recognized by a court, or anyone in the art, as being well-understood, routine and conventional activities in the industry.” Appeal Br. 11; *see also id.* at 13–18. The Examiner responds by citing Thornley<sup>2</sup> as evidence that the claim limitations are well-understood, routine and conventional. *See, e.g.,* Ans. 7 (citing Thornley ¶¶ 34–35). Appellant contends that the Examiner’s citation to Thornley does not cure

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<sup>2</sup> US 2006/0073451 A1, published Apr. 6, 2006.

the alleged deficiencies as to whether the claim limitations are well-known, routine and conventional. Reply Br. 4–11. Appellant’s contentions appear to require that Thornley anticipate the claims. Based on the record before us, we see nothing that is not well-known, routine and conventional in the claims.

The claims generally require holding various objects up to an individual and making subjective comparisons and evaluations. To the extent evidence is required to establish the conventionality of these claim features (i.e., to the extent it is not readily apparent), the Examiner’s citation to Thornley provides sufficient evidence.

To be clear, Thornley describes, for example, “assessing and analyzing the personality of a person,” including “methods of cross-referencing physical features displayed by a person to determine a personality profile or predisposition.” Thornley ¶ 3. Thornley describes “analyzing the physical attributes a person displays, their underlying behavioral tendencies and interpersonal mannerisms . . . by assessing different elements of a person’s physical features to determine the presence of a certain attributes,” where “the element is compared with different attributes for the element to determine whether or not a certain attribute is present, and/or which attribute is most dominant.” *Id.* ¶ 30. Thornley explains that “[t]he basic design elements are the color, line, sound, and movement that a person displays by their physical features and actions.” *Id.* ¶ 34. Thornley further explains, for example, that “color can be generally described to be the visibly distinct coloring in their completion” and “line can be generally described as the combination of different lines that define the shape of various features on the person’s face, body, and general

silhouette,” which “can be observed and analyzed in order to determine which attributes correspond between the different elements.” *Id.*

Accordingly, the claims do not add any inventive concept.

For at least these reasons, after applying the 2019 Eligibility Guidance, we sustain the Examiner’s decision to reject claims 2–8, 15–20, and 30–41 under 35 U.S.C. § 101.

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
2–8, 15–20, and 30–41	§ 101	2–8, 15–20, and 30–41	
<b>Overall Outcome</b>		2–8, 15–20, and 30–41	

### DECISION

We AFFIRM the Examiner’s decision to reject claims 2–8, 15–20, and 30–41.

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).

AFFIRMED