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EXAMINER
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LUBIN, VALERIE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* RANDY T. ZIOBRO

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Appeal 2017-009743  
Application 14/875,099<sup>1</sup>  
Technology Center 3600

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Before JOHN A. EVANS, CARL L. SILVERMAN, and  
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–7, 10–13, and 15–20, which constitute all the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> The real party in interest is identified as Dura Health LLC. App. Br. 3.

## STATEMENT OF THE CASE

Appellant's invention relates to analyzing trending injury data suffered by operators, such as military operators, and determining combat mission readiness of the operators. Abstract; Spec. 13:20–14:10, 41:11–19, 45:14–16, 54:6–8, Figs. 1–7. Claim 1 is exemplary of the matter on appeal (emphasis added):

1. A method of analyzing *trending injury data* suffered by operators, comprising:

receiving at *a central server* first pre-injury data about a first operator, the first pre-injury data including a full-body medical assessment and a tactical occupational assessment for the first operator before an injury occurs, the first pre-injury data continuously compiled and stored at multiple, regular intervals in *a dynamic database*;

receiving at the central server a first plan of care that includes information related to a first injury suffered by a first operator, the first plan of care including any one or more of multiple treatment elements with a medical provider based at least in part on the tactical occupational assessment of the first operator, the first plan of care continuously compiled and stored in the dynamic database at every one of the multiple treatment elements with the medical provider for the first operator;

receiving at the central server second pre-injury data about a second operator, the second pre-injury data including a full-body medical assessment and a tactical occupational assessment for the second operator before an injury occurs, the second pre-injury data continuously compiled and stored at multiple, regular intervals in the dynamic database;

receiving at the central server a second plan of care that includes information related to a second injury suffered by a second operator, the second plan of care including any one or more of multiple treatment elements with a medical provider based at least in part on the tactical occupational assessment of the second operator, the second plan of care continuously compiled and stored in the dynamic database at every one of the multiple treatment elements with the medical provider for the second operator;

identifying one or more common characteristics between any one or more of the first pre-injury data, the second pre-injury data, the first operator, the second operator, the first plan of care, and the second plan of care;

analyzing each of the first pre-injury data, the second pre-injury data, the first operator, the second operator, the first plan of care, the second plan of care, and all identified common characteristics between any one or more of the first pre-injury data, the second pre-injury data, the first operator, the second operator, the first plan of care, and the second plan of care *to identify one or more trends* relating to one or more of the first pre-injury data, the second pre-injury data, the first operator, the second operator, the first plan of care, and the second plan of care;

*continuously creating a new dynamic database each time* any one of more of the first pre-injury data, the second pre-injury data, the first operator, the second operator, the first plan of care, and the second plan of care is received and each time any one or more trends relating to the first pre-injury data, the second pre-injury data, the first operator, the second operator, the first plan of care, and the second plan of care is identified;

*storing each of the continuously created new dynamic databases* on the central server; and

*transforming some portion of the first pre-injury data, the second pre-injury data, the first operator, the second operator, the first plan of care, the second plan of care, and the one or more identified trends* into data reflecting whether one or both of the first operator is combat mission ready and the second operator is combat mission ready, the first operator being combat mission ready based at least in part on the first pre-injury data and the second operator being combat mission ready based at least in part on the second pre-injury data; and

outputting to a user one or more of the identified trends and the transformed data reflecting whether one or both of the first operator and the second operator are combat mission ready.

App. Br. 33–35 (Claims Appendix)).

## REJECTIONS

Claims 1–7, 10–13, and 15–20 are rejected under 35 U.S.C. § 112(a) or 35 U.S.C. § 112 (pre-AIA), first paragraph, as failing to comply with the written-description requirement. Final Act. 5.

Claim 20 is rejected under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. Final Act. 6.

Claims 1–7, 10–13, and 15–20 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter. Final Act. 6–7.

Claims 1–7, 10–13, 15–18, and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Malone (US 2006/0206027 A1; published Sept. 14, 2006) (“Malone”) in view of Collins et al. (US 2011/0077977 A1; published Mar. 31, 2011) (“Collins”). Final Act. 8–12.

Claim 19 is rejected under 35 U.S.C. § 103 as being unpatentable over Malone, Collins, and Ott et al. (US 2005/0108055 A1; published May 19, 2005) (“Ott”). Final Act. 12–13.

## ANALYSIS

### *The § 112(a) rejection*

A written “description must ‘clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.’” *Ariad Pharms., Inc. v. Eli Lilly and Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc) (alteration in original) (quoting *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed. Cir. 1991)). “In other words, the test for sufficiency is

whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Id.* (citing *Vas-Cath*, 935 F.2d at 1563). “Although [the applicant] does not have to describe exactly the subject matter claimed, . . . the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed.” *Vas-Cath*, 935 F.2d at 1563 (alteration in original) (quoting *In re Gosteli*, 872 F.2d 1008, 1012 (Fed. Cir. 1989)). Put another way, “the applicant must . . . convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of *the invention*.” *Id.* at 1563–64.

The Examiner finds the application does not describe a transformation step in enough detail for the claims 1, 16, and 17 limitation “transforming some portion” of data to show that Applicant was in possession of this feature when the application was filed. Final Act. 5. The Examiner finds the limitations “continuously creating a new dynamic database each time” and “storing each of the continuously created new dynamic databases” constitute new matter because Applicant’s disclosure recites only one database which is being updated and does not recite creating databases. *Id.* (citing PG-Pub U.S. 2016/0098808 A1; Apr. 7, 2016 (hereinafter “Spec.”) ¶ 127).

Regarding “transforming,” Appellant argues the Specification describes “compilation” of injury data and “analysis of injury data” and the “analysis of the injury data based on the selected criteria is what *transforms* the data.” App. Br. 9–10 (citing Spec. ¶¶ 135–136). Appellant argues “the practical, application-specific results can either be the *transformed data* or can be some additional application of the *transformed data*.” *Id.* at 10

(citing Spec. ¶ 148) (emphasis added)). According to Appellant, paragraph 148 of the Specification is an example of “transforming some portion” of data to generate a commander’s report. *Id.*

The Examiner finds the Specification does not describe a transformation process because the transformation process depends on an analysis and Appellant does not describe the analysis process. Ans. 2. The Examiner finds that paragraph 148 of the Specification merely states that a commander can use data in a report in order to determine if operators are combat ready and does not provide details for the claimed feature of “transforming some portion . . . into data reflecting whether one or both . . . operator[s] [are] combat ready . . . .” *Id.*

We are persuaded by Appellant’s arguments because the compilation and analysis transforms the data.

Appellant argues the Examiner errs in finding the claims 1, 16, and 17 limitations “continuously creating a new dynamic database each time” and “storing each of the continuously created new dynamic databases” constitute new matter. App. Br. 10. According to Appellant, the recited database is “dynamic” and “continuously changing with additions of new data about new injuries and any analyses performed on the data.” *Id.* (citing Spec. ¶ 127). As changes are made to the database, the database is thus changed and repeatedly or *continuously* stored, creating a “new” database that is different from the database prior to being changed. *Id.* Appellant argues the dynamic nature of the database creates “multiple databases,” each database capable of recording and storing a change in data wherein each of the “multiple databases” can be retrieved or accessed based on the tracking or recording the changes made to the dynamic database. *Id.* at 10–11.

The Examiner finds paragraph 127 of the Specification recites a single database being updated. Ans. 2. According to the Examiner, “[u]pdating a database is different from creating multiple databases, and adding/updating data to the database does not structurally split the database into two, three or more databases each time said addition or update occurs; the database remains a single database with updated content.” *Id.* at 3. The Examiner finds Appellant’s claimed language of continuously creating a new database and storing said new database is unsupported and constitutes new matter. *Id.*

We are persuaded by Appellant’s arguments because updating a database constitutes continuously creating a new dynamic database and the claim does not recite creating multiple databases or structurally splitting the databases.

Appellant argues the Examiner errs in finding the claim 10 limitation “in response to receiving the first care plan, generating comparative data between the first pre-injury data and the first plan of care . . . is not described in [the] specification.” App. Br. 11 (citing Final Act. 5). According to Appellant, the Specification, paragraph 141 and Figure 6, illustrates the collection of “pre-injury evaluations” 610 and “injury treatment evaluations” 614 which can be correlated 620 and assessed 624. *Id.* Appellant argues the recited element of Appellant’s claim 10 was described in Appellant’s Specification in at least the portions referenced above in sufficient detail for a person of skill in the art to understand that Appellant had possession of the claimed features. *Id.*

Regarding “in response to receiving the first care plan, generating comparative data between the first pre-injury data and the first plan of care,” the Examiner finds Paragraph 141 of the Specification states that “data is

being correlated without describing said correlation process, nor does it disclose/describe a process of generating comparative data.” Ans. 3.

We are persuaded by Appellant’s arguments because the Specification sufficiently describes pre-injury evaluations and injury treatment evaluations which can be correlated and assessed.

The Examiner finds the claim 19 limitation “evaluation equipment being electrically coupled to the central server” is not recited in the Specification and constitutes new matter. Final Act. 5–6. Appellant argues the Specification describes “[t]he testing equipment . . . can collect the injury data in a software format for electronic storage and analysis” and “the injury strengthening and/or evaluation equipment can be linked to software . . . .” App. Br. 11 (citing Spec. ¶¶ 43, 44). According to Appellant, the recited element of claim 19 was described in the Specification with enough detail to allow a person of skill in the art to understand that Appellant was in possession of the claimed invention and, thus, these features are not new matter. *Id.* The Examiner disagrees with Appellant’s arguments “because the recitation of equipment in those paragraphs and of a server (¶ 127)

receiving data does not show how the equipment is structurally or electrically coupled to the disclosed server.” Ans. 4.

We are not persuaded by Appellant’s arguments as the Examiner’s findings, *supra*, are reasonable. Additionally, we note Appellant does not rebut the Examiner’s findings in a Reply Brief.

In view of the above, we do not sustain the rejection of independent claims 1, 16, and 17, and dependent claims 2–7, 10–13, 15, 18, and 20. We sustain the rejection of claim 19.

*The § 112(b) rejection*

The Examiner finds the claim 20 limitation “identifying one or more tactical activities known to be more difficult” is indefinite because the Examiner cannot ascertain the metes and bounds of “known to be more difficult,” i.e., “known to whom/what, how.” Final Act. 6.

Appellant argues the recited portion more fully reads “identifying one or more tactical activities known to be more difficult *for an operator suffering from the identified first injury . . .*” and “[t]he further reading of the claim clearly defines whom, the operator; what, tactical activities; and how, the tactical activity being more difficult for an operator suffering from the first injury than an operator not suffering from the first injury.” App. Br. 11–12. According to Appellant, “[t]hese identified who, what, and how clearly define metes and bounds of the claim.” *Id.* Appellant argues paragraph 70 of the Specification further explains this concept: “tactical skills that are known to be more difficult with specific weakened physical

areas . . . ,” such “weakened physical areas” can be so “weakened” due to injury. *Id.*

The Examiner finds Appellant does not set the metes and bounds for the limitation for instance by indicating information regarding the tactical activities, injury and pre-injury data. Ans. 4. Therefore, according to the Examiner, one of ordinary skill in the art cannot ascertain the limits of what is “known to be more difficult” to whom/what it is known, and how it is known. *Id.* The Examiner finds “more difficult” is a relative term for which Appellant does not provide a standard measure. *Id.*

We are persuaded by Appellants’ arguments regarding indefiniteness based on the understanding of one of ordinary skill in the art. *In re Packard*, 751 F.3d 1307 (Fed. Cir. 2014). As Appellant emphasizes, claim 20 recites “known to be more difficult” in the context of the additional elements, discussed *supra*, and, in this context, one of ordinary skill in the art would understand the claim with sufficient definiteness. Additionally, we note the Specification describes, for example, “[o]perators suffering from shoulder injuries might need additional or repeated evaluation for the types of tactical skills that are known to be more difficult with specific weakened physical areas, like an operator’s injured shoulder when the operator needs to accurately fire an M16 rifle.” Spec. 22:22–25.

In view of the above, we do not sustain the 35 U.S.C. § 112 (pre-AIA), second paragraph, rejection of claim 20.

*The § 101 rejection*

PRINCIPLES OF LAW

Patent-eligible subject matter is defined in 35 U.S.C. § 101 of the Patent Act, which recites:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

There are, however, three judicially created exceptions to the broad categories of patent-eligible subject matter in 35 U.S.C. § 101: “Laws of nature, natural phenomena, and abstract ideas.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citation omitted); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012).

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*. 573 U.S. 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 *Alice*, 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, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding of rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 192 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 184 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 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 191–192 (“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*, at 221 (citation 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.* (quoting *Mayo*, 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. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (“Memorandum”). Under that guidance, we first determine whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human interactions such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* 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* Memorandum.

Appellant argues the Examiner errs in determining that the claims are directed to an abstract idea, the claims do not recite significantly more than the abstract idea, and in failing to give sufficient weight to Declarations submitted by Appellant. App. Br. 12–28.

The Examiner determines

[c]laims 1, 16 and 17 are directed to a method and systems for performing functions of receiving pre-injury data and plan of care for multiple operators, analyzing the received data to identify trends, creating and storing databases with the received data and identified trends, transforming and outputting the data. Those functions are directed to the abstract idea of using categories to organize, store and transmit data (Cyberfone), as well as the abstract ideas of comparing new and stored data, and applying rules to identify options (SmartGene) and collecting and comparing known information (Classen) because they relate to receiving data, comparing the data, storing the data in an organized manner in a database and based on the comparison identifying trends and other data analyses to output/transmit.

The claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because first, for claim 1, there are no additional elements, and or claims 16 and 17, the server and the “means for” components refer to a generic processor that is well-known in computing technology and is being used to implement the abstract ideas.

Final Act. 6–7

Appellant argues the expert testimony of Dr. Michael Bledsoe and Ret. Lt. Col. Anthony Capobianco should be given substantial weight. App. Br. 13–14 (citing § 1.132 Declarations at App. Br. XI, Evidence Appendix, Exhibits A, B). Appellant argues the Declarations show the conventional state of the art of treating injuries suffered by operators does not include the claimed “dynamic database” and additional features. *Id.* at

13. According to Appellant, the Declarations support novelty and uniqueness of the claimed methods and systems as being directed to the combat mission ready status of operators and refute the Examiner's assertion that Appellant's claims are directed to abstract ideas without having additional limitations that add significantly more to the judicial exceptions. *Id.* Appellant argues the Declarations "should carry substantial weight in determining the fact-based analysis of what is considered conventional in then relevant art, which in this case is a specific application to highly-trained military operators who engage in combat missions." *Id.* at 14.

Appellant argues the claims recite much more than organizing, storing, and transmitting of data, comparing new and stored data and applying rules and/or collecting and comparing known information because, for example, "claim 1 . . . recites a method of analyzing trending injury data in a dynamic database *that are both unconventional in the art of injury analysis and provides sufficient technical details that produces a concrete result that is rooted in technology.*" *Id.* at 17 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)) (emphasis added). According to Appellant, claim 1 recites a method of analyzing trending injury data suffered by operators who have associated pre-injury data that includes both a full body medical assessment and a tactical occupational assessment. *Id.* at 19. Appellant argues, referring to Dr. Bledsoe's Declaration, conventional processing of injury claims was through "(1) paper files; (2) without any feedback on the patients and no follow-up or re-evaluation of the patient; and (3) with only post-injury care that was significantly delayed from the date of the injury" and "[i]n stark contrast, Appellant recites dynamic pre-injury analysis, that is specific to the tactical

occupational assessment of the operator.” *Id.* Appellant argues Ret. Lt. Col. Capobianco’s Declaration highlights that the conventional manner in which the AFSOC (Air Force Special Operations Command) operators sought medical treatment was post-injury using static data. *Id.* at 21.

Appellant argues, like *Enfish*, the claims recite a concrete improvement in database technology, which is deeply rooted in technology and claims a very specific and dynamic database that continuously produces a concrete result of another dynamic database. *Id.* at 23 (citing *Enfish*). Appellant argues the Examiner did not consider the invention as a whole. *Id.* at 25.

Appellant further argues the claims recite significantly more than the abstract idea. *Id.* at 26–28. According to Appellant, it is “the combination of creating a dynamic database of injury information and identified trends and then continuously updating the dynamic database each time new data is received and/or analysis occurs that is patentable subject matter.” *Id.* at 27 (citing *Alice*, 573 U.S. at 208; *Diehr*, 450 U.S. at 175).

In the Answer, the Examiner finds the expert testimony does not materially impact the eligibility analysis of the claimed subject matter, which in its current form remains ineligible. Ans. 4. The Examiner finds the use of a database to store data and the continuous update of the database are routine and well-known functions linked to data storage which do not add significantly more to the disclosed abstract concepts. *Id.* at 5.

According to the Examiner, the analysis step and the transforming step are similar to a comparison process of received data with other received and stored data as in both *Classen* and *SmartGene*. *Id.* at 5 (citing *Classen Immunotherapies, Inc. v. Elan Pharms, Inc.*, 786 F.3d 892 (Fed. Cir. 2015);

*SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App'x 950 (Fed. Cir. 2014))). The Examiner determines the present claims are ineligible because, like *Electric Power Group*, Appellant's claims are directed to "collecting data, analyzing it and displaying certain results of the collection and analysis." *Id.*

The Examiner finds Appellant's arguments referring to "smart database" are not reflected in the claims and the claims are not similar to *DDR* because Appellant's claims are not rooted in technology and could be performed using pen and paper to review data received from the database or other conventional data communication means such as paper, phone, fax, face-to-face conversation, etc. *Id.* (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)). The Examiner finds *Enfish* is inapplicable because, unlike *Enfish*, which improved the function of a computer, the present claims do not achieve unconventional results or improve the function of a computer. *Id.* The Examiner finds the operators do not add to eligibility considerations. *Id.* at 6.

As discussed below, we are persuaded by Appellant's arguments. In particular, we determine the Examiner's analysis does not correctly weigh the Declarations in *Alice* step 2 inventive-concept inquiry.

Applying the current Guidelines (Memorandum), we agree with the Examiner's findings that claim 1 recites abstract ideas, including "collecting data, analyzing it and displaying certain results of the collection and analysis." Ans. 5 (citing *Electric Power Group, LLC, v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016)); *see also* additional abstract ideas, Final

Act. 7<sup>2</sup>. The identified abstract ideas constitute a method of organizing human activity and constitute a judicial exception. *See* Memorandum, 84 Fed. Reg. 50 at I(a), III.

Next, we consider whether the claim includes additional elements that integrate the judicial exception into a practical application. Here, although the claim does include additional elements, such as a dynamic database, a central server, a first and second operator, these are insufficient to constitute integration into a practical application because these elements are recited at high level of generality and the claim simply applies the judicial exception using computer components. In particular, the additional elements do not constitute a particular machine, but instead use a generically recited computer (i.e., generic computer components) to perform the abstract idea. *See* Memorandum, 84 Fed. Reg. 50 at III A(2); MPEP § 2106.05(b); *Eibel Process Co. v. Minn. & Ontario Paper Co.*, 261 U.S. 45, 64–65 (1923); MPEP § 2106.05(f); *Alice*, 573 U.S. at 222–26; *Benson*, 409 U.S. 63; *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044 (Fed. Cir. 2017).

Therefore, under the Memorandum, claim 1 is directed to an abstract idea, and we proceed to analyze the claims under *Alice* step 2. As discussed

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<sup>2</sup> “Claims 1, 16 and 17 are directed to a method and systems for performing functions of receiving pre-injury data and plan of care for multiple operators, analyzing the received data to identify trends, creating and storing databases with the received data and identified trends, transforming and outputting the data. Those functions are directed to the abstract idea of using categories to organize, store and transmit data (Cyberfone), as well as the abstract ideas of comparing new and stored data, and applying rules to identify options (SmartGene) and collecting and comparing known information (Classen) because they relate to receiving data, comparing the data, storing the data in an organized manner in a database and based on the comparison identifying trends and other data analyses to output/transmit.” Final Act. 6–7.

above, in the *Alice* step 2 inquiry, we determine whether there is an inventive concept that renders the abstract idea patent eligible.

We note the introduction of a processor of a computer system into the claims to implement an abstract idea is not a patentable application of the abstract idea. *Alice*, 573 U.S. at 223. The computer implementation here is purely conventional and performs basic functions. *See id.* at 225. Appellant does not adequately show how the claimed steps are done technically such that they cannot be done manually or that they are not routine and conventional functions of a generic computer. *See Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1334 (Fed. Cir. 2015) (“the limitations of claim 17 involve arranging a hierarchy of organizational and product groups, storing pricing information, retrieving applicable pricing information, sorting pricing information, eliminating less restrictive pricing information, and determining the price. All of these limitations are well-understood, routine, conventional activities previously known to the industry.”).

Appellant’s reliance on *DDR* is misplaced as the recited claims do not improve the computer or underlying technology. In *DDR*, the claims at issue involved, *inter alia*, “web page[] displays [with] at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants” (claim 1 of U.S. Patent No. 7,818,399). The Federal Circuit found the claims in *DDR* to be patent eligible under step two of the *Mayo/Alice* test because “the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR Holdings*, 773 F.3d at 1257. Specifically, the Federal Circuit found the claims addressed the “challenge of retaining control over the attention of the customer in the

context of the Internet.” *Id.* at 1258. The rejected claims are dissimilar to *DDR*’s web page with an active link, and the Specification does not support the view that the computer related claim elements are unconventional. *See* Spec. 41:8–19. Similarly, we agree with the Examiner that, unlike *Enfish*, the present claims are not directed to a specific improvement to computer functionality.

However, we are persuaded by Appellant’s argument that the Examiner erred in determining that the Declarations of Dr. Michael Bledsoe & Ret. Lt. Col. Anthony Capobianco do not “materially impact the eligibility of the claimed subject matter.” Ans. 4. In particular, on the record before us, the unrebutted Declarations persuasively contradict that claim 1 recites only generic computer components that are well understood, routine, and conventional under step two of *Alice*. We note the patent eligibility inquiry may contain underlying issues of fact. *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016). In particular, “[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). Here, on the record before us, the facts set forth in the unrebutted Declarations support that claim 1 is not well understood, routine, and conventional to a skilled artisan in the relevant field. *See also* MPEP § 2106.05(d).

In view of the above, we do not sustain the rejection of claim 1, independent claims 16 and 17, and dependent claims 2–7, 10–13, 15, and 18–20.

*The § 103 rejection*

Appellant argues the Examiner errs in finding the combination of Malone and Collins teaches the limitations of independent claims 1, 16, and 17 because the Examiner incorrectly relies on Collins to teach the limitation “to identify one or more trends relating to one or more of the first pre-injury data, the second pre-injury data, the first operator, the second operator, the first plan of care, and the second plan of care.” App. Br. 28–29. According to Appellant, Collins, paragraph 30 relied upon by the Examiner, only briefly references trends in data for determining a comprehensive worker’s compensation loss history on a business, not for active treatment of an injured operator both pre-injury and post-injury. *Id.* at 28. Appellant argues Collins does not mention trends anywhere else and the mention of trends in Collins provides no explanation as to the manner in which the claims are calculated or used and no examples are explained beyond merely citing the type of data in which a trend might occur. *Id.* Appellant further argues the data collected and analyzed in Collins relates only to a static snapshot of data that is taken *after* an injury occurs and without an interactive or dynamic component. *Id.*

The Examiner notes that Collins is relied upon to disclose identifying trends related to injury, how the trend data is used afterwards, i.e., for worker’s compensation or for treatment of an injury is directed to the intended use of the data resulting from the step of identifying said trend, and such intended use does not limit the step itself. Ans. 6–7. Collins is not relied upon to show a data-analysis process, for which Examiner relies on Malone. *Id.* at 7. The Examiner finds the type of injury or medical data used to identify trends is a substitution of one known type of medical data

for another known type of medical data that yields the same predictable results of showing trends in injury data. *Id.*

Regarding Appellant's argument that, because Collins does not teach dynamic data, its trends cannot become dynamic trends either, the Examiner finds that data used to identify trends, whether old or new does not change the step of identifying the trends, but merely the value/direction of the trends may change. *Id.* The Examiner finds dynamic data simply refers to updated data, which again does not further limit a step of identifying trends using injury/medical data. *Id.* The Examiner further finds Malone discloses updating a database. *Id.* (quoting Malone ¶ 116, "Next, at operation 422, the computing apparatus 102 updates the data source with data associated with the predictive analysis associated with the athlete assessed. Thus, the computing apparatus 102 adds more data to the athlete injury data store in the data mine server 112 after each assessment."). The Examiner finds Collins also updates a database (quoting Collins ¶ 15, "Insurance company 125 can also update its databases regularly," and citing Collins ¶ 32). According to the Examiner, in Malone and Collins, data is used to identify trends changes and would therefore result in changed or updated trends. *Id.*

Appellant presents no persuasive argument that the claim terms should be limited to exclude the combined teachings of Malone and Collins and presents no persuasive argument that the Examiner's findings and claim interpretations are unreasonable or overbroad. Collins teaches using trending information to deal with injury data, and we agree one of ordinary skill in the art would use this general teaching in the injury-treatment system of Malone. Claim terms in a patent application are given the broadest reasonable interpretation consistent with the Specification, as understood by

one of ordinary skill in the art. *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004).

Appellant argues the references individually, although the rejection is based on the combination of the teachings of the cited references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (“[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.” (citations omitted)); *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Appellant also argues an unreasonably narrow teaching of the cited references and an overly demanding standard of obviousness.

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

*Keller*, 642 F.2d at 425.

Here, the Examiner provides sufficient evidence as required for obviousness. As stated by the Supreme Court, the Examiner’s obviousness rejection must be based on:

[S]ome articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

*KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

The Examiner’s findings are reasonable because the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle” because the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 420–21.

Based upon the teachings of the references and the fact that each claimed element was well known in the art, we agree with the Examiner because the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. *Id.* at 415–16. We note Appellant presents no persuasive arguments that the results are unpredictable. Moreover, as discussed *supra*, the Examiner additionally provided reasons why one of ordinary skill in the art would combine each of the references in the manner suggested.

In view of the above, we sustain the rejection of claim 1, independent claims 16 and 17 as these claims are argued together with claim 1, and dependent claims 2–7, 10–13, 15, and 18–20.

DECISION

We affirm the Examiner's rejection of claim 19 and reverse the rejection of claims 1–7, 10–13, 15–18, and 20 under 35 U.S.C. § 112(a).

We reverse the Examiner's rejection of claim 20 under 35 U.S.C. § 112(b).

We reverse the Examiner's rejection of claims 1–7, 10–13, and 15–20 under 35 U.S.C. § 101.

We affirm the Examiner's rejections of claims 1–7, 10–13, and 15–20 under 35 U.S.C. § 103.

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