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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* GREGORY J. HUMMER

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Appeal 2017-010609  
Application 13/895,727<sup>1</sup>  
Technology Center 3600

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Before CARLA M. KRIVAK, HUNG H. BUI, and JON M. JURGOVAN,  
*Administrative Patent Judges.*

JURGOVAN, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant seeks review under 35 U.S.C. § 134(a) from a Final Rejection of claims 1, 2, 4–12, and 14–18. Claims 19 and 20 have been withdrawn from consideration, and claims 3 and 13 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.<sup>2</sup>

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<sup>1</sup> Appellant identifies the inventor, Gregory J. Hummer, as the real party in interest. (App. Br. 1.)

<sup>2</sup> Our Decision refers to the Specification (“Spec.”) filed May 16, 2013, the Final Office Action (“Final Act.”) mailed October 5, 2016, the Advisory Action (“Second Advisory Act.”) mailed March 3, 2017, the Appeal Brief (“App. Br.”) filed March 3, 2017, the Examiner’s Answer (“Ans.”) mailed June 8, 2017, and the Reply Brief (“Reply Br.”) filed August 8, 2017.

## CLAIMED INVENTION

The claims are directed to “a web-based health index calculator that facilitates incentivizing a user to improve his health in order to realize monetary savings.” (Spec. ¶ 2.) The claims recite a method and system for calculating an aggregated monetary cost associated with an individual’s health index parameters including biometric parameters and behavioral parameters, and adjusting the health index parameter(s) to obtain an updated aggregate health cost that would “show the user the amount of health cost savings that can be achieved by different health index parameter adjustments.” (Abstract.)

Claims 1 and 11 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system that facilitates calculating a monetary cost associated with an individual’s health index, comprising:
  - a processor that executes computer-executable instructions for calculating a user’s health index and a monetary cost associated therewith;
  - a computer-readable medium that stores the computer-executable instructions; and
  - a server comprising the processor and the computer-readable medium and configured to provide Internet access to the processor for presenting calculated cost information to the user via a graphical user interface on a user device;wherein the instructions comprise:
  - receiving a plurality of individual health index parameter values, the health index parameter values including values related to biometric data associated with the user and health behavior data associated with the user;
  - calculating a cost of each health index parameter;
  - aggregating the costs of each health index parameter;
  - providing the costs of each health index parameter and the aggregate cost to the user;

receiving input related to an adjustment to at least one health index parameter value;  
updating the costs of each adjusted health index parameter and updating the aggregate cost; and  
providing the updated cost of each health index parameter and the updated aggregate cost to the user in real time.

(App. Br. 27–32 (Claims App’x).)

### REJECTIONS & REFERENCES

(1) Claims 1, 4, 5, 9–11, 14, 17, and 18 stand rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement. (Final Act. 14–21; Second Advisory Act. 2.)<sup>3</sup>

(2) Claims 1, 2, 4–12, and 14–18 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. (Final Act. 11–13; Second Advisory Act. 2.)<sup>4</sup>

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<sup>3</sup> The Final Office Action rejected claims 3–5, 9, 10, 13, 14, 17, and 18 under 35 U.S.C. § 112(a) as failing to comply with the written description requirement. (*See* Final Act. 14.) Appellant subsequently filed an After-Final Amendment on February 28, 2017, which was entered by the Examiner via the Advisory Action mailed on March 3, 2017. (*See* Second Advisory Act. 1–2.) This After-Final Amendment cancelled claims 3 and 13, and incorporated the limitations of dependent claim 3 into independent claim 1, and of dependent claim 13 into independent claim 11. The March 3, 2017 Advisory Action indicates the § 112(a), written description rejection of claims 3 and 13 “now appl[ies] to claims 1 and 11 under the same rationale previously provided with respect to claims 3 and 13.” (Second Advisory Act. 2.) Further discussion regarding the status of the Examiner’s rejections is presented in our analysis below.

<sup>4</sup> The Final Office Action rejected claims 1–18 under 35 U.S.C. § 101. (*See* Final Act. 11.) The March 3, 2017 Advisory Action, however, indicates the § 101 rejection of claims 3 and 13 (cancelled via the After-Final Amendment dated February 28, 2017) now applies to claims 1 and 11,

(3) Claims 1, 2, 4, 5, 11, 12, and 14 stand rejected under 35 U.S.C. § 103 based on Baby2See’s Quit It Now: Cigarette and Alcohol Use, Cost Calculator (August 15, 2011) (hereinafter “Quit It Now”) ([https://web.archive.org/web/20110815025459/http://www.baby2see.com/medical/cigarettes\\_alcohol.html](https://web.archive.org/web/20110815025459/http://www.baby2see.com/medical/cigarettes_alcohol.html)) and Skelly et al. (US 2008/0010086 A1, published Jan. 10, 2008) (“Skelly”). (Final Act. 21–30; Second Advisory Act. 2.)<sup>5</sup>

(4) Claims 6–8 and 15 stand rejected under 35 U.S.C. § 103 based on Quit It Now, Skelly, and Akradi (US 2012/0191469 A1, published July 26, 2012). (Final Act. 30–33; Second Advisory Act. 2.)<sup>6</sup>

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which incorporate the features of claims 3 and 13. (Second Advisory Act. 2.)

<sup>5</sup> The Final Office Action rejected claims 1, 2, 11, and 12 under 35 U.S.C. § 102(a)(1) as anticipated by Quit It Now, and claims 3–5, 13, and 14 under 35 U.S.C. § 103 based on Quit It Now and Skelly. (*See* Final Act. 21, 26.) The March 3, 2017 Advisory Action, however, indicates the § 103 rejection of claims 3 and 13 (cancelled via the After-Final Amendment dated February 28, 2017) “now appl[ies] to claims 1 and 11 [including the features of claims 3 and 13] under the same rationale previously provided with respect to claims 3 and 13.” (Second Advisory Act. 2.) We further interpret the current rejection of dependent claims 2 and 12 to be rejected under § 103 over Quit It Now and Skelly, because claims 2 and 12 include the features of their respective base claims 1 and 11 (rejected based on Quit It Now and Skelly).

<sup>6</sup> The Final Office Action rejected claims 6–8 and 15 under 35 U.S.C. § 103 based on Quit It Now and Akradi. (*See* Final Act. 30.) Based on the entry of the After-Final Amendment dated February 28, 2017, we interpret the current rejection of dependent claims 6–8 and 15 to be rejected under § 103 over Quit It Now, Skelly, and Akradi because claims 6–8 and 15 include the features of their respective base claims 1 and 11 (rejected based on Quit It Now and Skelly).

(5) Claims 9 and 17 stand rejected under 35 U.S.C. § 103 based on Quit It Now, Day (US 2005/0240438 A1, published Oct. 27, 2005), Abrahamson (US 8,639,604 B1, issued Jan. 28, 2014), and Skelly. (Final Act. 34–37.)

(6) Claims 10 and 18 stand rejected under 35 U.S.C. § 103 based on Quit It Now, Skelly, and Bost (US 2003/0149596 A1, published Aug. 7, 2003). (Final Act. 37–38; Second Advisory Act. 2.)<sup>7</sup>

(7) Claim 16 stands rejected under 35 U.S.C. § 103 based on Quit It Now, Skelly, Akradi, and Hua et al. (US 2010/0173619 A1, published July 8, 2010) (“Hua”). (Final Act. 38–39; Second Advisory Act. 2.)<sup>8</sup>

## ANALYSIS

### *Status of the Claim Amendments Presented in the After-Final Amendment filed February 28, 2017*

After filing the Notice of Appeal on January 5, 2017, Appellant filed an After-Final Amendment on February 28, 2017 (“Amendment F,” as

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<sup>7</sup> The Final Office Action rejected claims 10 and 18 under 35 U.S.C. § 103 based on Quit It Now and Bost. (*See* Final Act. 37.) Based on the entry of the After-Final Amendment dated February 28, 2017, we interpret the current rejection of dependent claims 10 and 18 to be rejected under § 103 over Quit It Now, Skelly, and Bost because claims 10 and 18 include the features of their respective base claims 1 and 11 (rejected based on Quit It Now and Skelly).

<sup>8</sup> The Final Office Action rejected claim 16 under 35 U.S.C. § 103 based on Quit It Now, Akradi, and Hua. (*See* Final Act. 38.) Based on the entry of the After-Final Amendment dated February 28, 2017, we interpret the current rejection of dependent claim 16 to be rejected under § 103 over Quit It Now, Skelly, Akradi, and Hua because claim 16 includes the features of its base claim 11 (rejected based on Quit It Now and Skelly).

styled by Appellant, *see* After-Final Amendment 1). Amendment F amended independent claims 1 and 11 to incorporate all the limitations of respective dependent claims 3 and 13, canceled claims 3 and 13, and amended claims 4, 5, and 14 (which had depended from claims 3 and 13) to depend from claims 1 and 11. (*See* Amendment F 2–5.)

The Examiner’s Advisory Action dated March 3, 2017 (“Second Advisory Act.”) *entered Amendment F*, indicating that

The submitted amendments rewrite independent claims 1 and 11 to incorporate all of the subject matter of previously depending claims 3 and 13, cancel previously depending claims 3 and 13, and change the dependency of claims 4, 5, and 14 which had depended from claims 3 and 13. Claims 1 and 11 were rejected under 35 USC 102(a)(1) and 35 USC 101 as set out in the Final Rejection mailed 10/5/2016. Claims 3 and 13 were rejected under 35 USC 112(a) as failing to satisfy the written description requirement, under 35 USC 101, and under 35 USC 103 as set out in the Final Rejection mailed 10/5/2016. *Based on the incorporation of the subject matter of claims 3 and 13, each of the previous grounds of rejection set forth with regard to claims 3 and 13 now apply to claims 1 and 11 under the same rationale previously provided with respect to claims 3 and 13.*

(Second Advisory Act. 1–2 (emphasis added).)

The Examiner’s Answer, however, states “the amendments included in Amendment F will not be entered” because “the amendment . . . does not remove issues for appeal.” (Ans. 31.) This Answer statement, however, has *no legal effect*, because (i) the Examiner has previously entered Amendment F via the Advisory Action mailed March 3, 2017 as explained *supra*, and the Answer cannot serve to remove an amendment the Examiner has previously admitted, and (ii) Amendment F *does in fact remove issues for appeal*, as it

obviates the basis of the § 102(a)(1) rejection of claims 1 and 11 over Quit It Now.<sup>9</sup>

In conclusion, the record indicates that Appellant's Amendment F was entered. Therefore, the claims before us on appeal are the claims in Amendment F (which are the claims presented by Appellant in the Appeal Brief's Claim Appendix). Our analysis below therefore discusses *claims 1 and 11 as amended by Amendment F*. As discussed *supra*, we also consider the § 102(a)(1) rejection of claims 1 and 11 over Quit It Now to have been effectively withdrawn such that it is not before us for review as part of the instant appeal. The rejections before us for review as part of the instant appeal are "each of the previous grounds of rejection set forth with regard to claims 3 and 13 [(now cancelled via Amendment F)]," the rejections "now apply[ing] to claims 1 and 11 under the same rationale previously provided with respect to claims 3 and 13." (*See* Second Advisory Act. 2.)

*Rejection of Claims 1, 4, 5, 9–11, 14, 17, and 18 under § 112(a),  
Written Description*

The Examiner asserts there is no support in the Specification for the limitation "calculating a cost of each health index parameter" where "the health index parameter values includ[e] values related to biometric data associated with the user," as recited in claims 1 and 11.<sup>10</sup> (Final Act. 15; Ans. 35.) Particularly, the Examiner finds the Specification's description of

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<sup>9</sup> The Examiner's Answer later concedes Amendment F was entered, when referring to "previous claim 3 (now incorporated into claim 1)." (*See* Ans. 33.)

<sup>10</sup> Claims 1 and 11 as amended by Amendment F, which incorporated the features of claims 3 and 13 into claims 1 and 11, as discussed *supra*.

estimating a food cost required to maintain a particular body mass index (BMI) does not support the claimed calculating costs associated with biometric parameters. (Final Act. 15–16.) The Examiner further asserts there is no support in the Specification for limitations recited in dependent claims 4, 5, 9, 10, 14, 17, and 18, including: (i) calculating a cost associated with biometric data comprising diastolic blood pressure information, blood glucose level information, body weight information, and total cholesterol level information, as recited in claims 4 and 14 (Final Act. 16–17), (ii) calculating a cost associated with health behavior data comprising stress level information and physical activity level information, as recited in claims 5 and 14 (Final Act. 16–18), (iii) calculating a return on investment value and a tax savings value as recited in claims 9 and 17 (Final Act. 18–20; Ans. 37), and (iv) calculating an estimated number of work days missed or a lost-productivity dollar amount from the health index parameter values, as recited in claims 10 and 18 (Final Act. 20–21; Ans. 38).

We do not agree with the Examiner. Rather, we agree with Appellant the Specification supports the claimed “calculating a cost of each health index parameter” where “the health index parameter values includ[e] values related to biometric data associated with the user” recited in claims 1 and 11. (App. Br. 13–14.) For example, Figures 3 and 6 and paragraphs 24–25, 27, 59, and 61 of the Specification explicitly describe *calculating cost of food* bought and consumed by a user of a particular body weight/BMI (biometric parameters). (See Spec. ¶¶ 24–25, 27, 59, 61, Figs. 3 and 6.) We concur with Appellant that the Specification provides sufficient evidence to show possession of calculating a cost of a health index parameter where “the

health index parameter values includ[e] values related to biometric data associated with the user” as recited in claims 1 and 11.

We further agree with Appellant that the Specification supports the claimed calculating a cost associated with biometric data comprising diastolic blood pressure information, blood glucose level information, body weight information, and total cholesterol level information recited in claims 4 and 14 (in view of their base claims 1 and 11). (App. Br. 14; Reply Br. 5.) For example, Figures 6–8 and paragraphs 24, 35, 39, 57, and 60–61 of the Specification explicitly describe a calculator for calculating costs associated with an individual’s diastolic blood pressure, blood glucose level, body weight, and cholesterol level. (See Spec. ¶¶ 24, 35, 39, 57, 60–61, Figs. 3 and 6.) We concur with Appellant that the Specification provides sufficient evidence to show possession of cost calculations as required by claims 4 and 14.

The Specification also supports the claimed calculating a cost associated with health behavior data comprising stress level information and physical activity level information, as recited in claims 5 and 14 (in view of their base claims 1 and 11). For example, Figures 6–8 and 10, and paragraphs 24–25, 35, 52–54, 56–57, and 61 of the Specification explicitly describe a calculator for calculating costs associated with an individual’s stress level and physical activity level. (See Spec. ¶¶ 24–25, 35, 52–54, 56–57, 61, Figs. 6–8 and 10.) We concur with Appellant that the Specification provides sufficient evidence to show possession of cost calculations as required by claims 5 and 14. (App. Br. 14; Reply Br. 5.)

We also agree with Appellant the Specification supports the claimed calculating a return on investment value and a tax savings value as recited in

claims 9 and 17. (App. Br. 14–16; Reply Br. 5–7.) For example, Figures 7 and 8 and paragraphs 28, 58, 61 of the Specification explicitly describe a calculator for calculating a return on investment value and a tax savings value. (See Spec. ¶¶ 28, 58, 61, Figs. 7 and 8.) We concur with Appellant that the Specification provides sufficient evidence to show possession of the calculations recited in claims 9 and 17.

Additionally, the Specification supports the claimed calculating an estimated number of work days missed or a lost-productivity dollar amount from the health index parameter values, as recited in claims 10 and 18. (App. Br. 17; Reply Br. 7–8.) For example, Figures 4, 7, and 8 and paragraphs 24–25, 27, 50, 52–54, and 58–61 of the Specification explicitly describe a calculator for estimating a number of work days missed or a lost-productivity dollar amount from health index parameter values. (See Spec. ¶¶ 24–25, 27, 50, 52–54, 58–61, Figs. 4, 7, and 8.) We concur with Appellant that the Specification provides sufficient evidence to show possession of the calculations as required by claims 10 and 18.

The Examiner’s assertion that claim 4 (and similarly, claims 1, 5, 10, 11, 14, and 18) fails to comply with the written description requirement under 35 U.S.C. § 112(a) because the Specification “*does not actually provide or describe the calculations used*” or “*the actual function or steps used to calculate costs associated with the biometric parameters,*” misapplies the *written description* requirement of § 112(a). (See Final Act. 16–17 (emphases added).)<sup>11</sup> Whether the Specification adequately teaches *how to*

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<sup>11</sup> We note, the Specification does disclose *calculations and steps* at least for calculating a cost of biometric data parameters associated with a user as required by claims 1 and 11 (see Spec. ¶¶ 24–25, 27, 58–59, 61), calculating a cost associated with body weight information as recited in claims 4 and 14

*make* a claimed invention throughout its scope, without undue experimentation, is an *enablement* issue under § 112(a), which is separate and distinct from the written description requirement of § 112(a). *See Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (*en banc*).

In particular, compliance with the *written description* requirement under § 112(a) requires Appellant to “reasonably convey[] to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Ariad*, 598 F.3d at 1351. That is, the disclosure must convey with reasonable clarity to those skilled in the art that the inventor was in possession of the invention. *See Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563–64 (Fed. Cir. 1991). However, “the disclosure as originally filed does not have to provide *in haec verba* support for the claimed subject matter at issue.” *Purdue Pharma L.P. v. Faulding Inc.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000). Additionally, what is conventional or well known to one of ordinary skill in the art need not be disclosed in detail. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986); *see also Capon v. Eshhar*, 418 F.3d 1349, 1358 (Fed. Cir. 2005) (“The ‘written description’ requirement must be applied in the context of the particular invention and the state of the knowledge. . . . As each field evolves, the balance also evolves between what is known and what is added by each inventive contribution.”). As explained *supra*, we concur with Appellant

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(*see Spec.* ¶¶ 24–25, 59, 61), and calculating a return on investment value and a tax savings value as recited in claims 9 and 17 (*see Spec.* ¶¶ 28, 58, 61).

that the Specification provides sufficient evidence to show possession of the invention recited in claims 1, 4, 5, 9–11, 14, 17, and 18.

Accordingly, for the foregoing reasons, we do not sustain the Examiner’s rejection of claims 1, 4, 5, 9–11, 14, 17, and 18 under the written description requirement of 35 U.S.C. § 112(a).

*Rejection of Claims 1, 2, 4–12, and 14–18 under § 101*

The Examiner finds the claims are directed to an abstract idea because they recite steps for calculating costs, aggregating the costs, and updating an aggregate cost. (Final Act. 11–12.) The Examiner finds the claimed “steps are similar to a mathematical relationship or formula in that costs of the health index parameters are calculated using values for the parameters and an aggregated cost is calculated from the costs, and both the costs and aggregated cost are updated based on adjustments to the parameter values.” (Final Act. 12.) The Examiner further finds the claims do not amount to significantly more than the abstract idea because they recite generic computer components performing generic computer functions for data gathering, processing, and displaying. (Final Act. 12–13; Ans. 34.) For these reasons, the Examiner concludes the claims are directed to unpatentable subject matter under § 101. *Id.*

To determine whether subject matter is patentable under § 101, the Supreme Court has set forth a two part test “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). The first step in the analysis is to “determine whether the claims at issue are directed to one of those

patent-ineligible concepts,” such as an abstract idea. *Id.* (citation omitted). For computer-related technologies, “the first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the *specific asserted improvement* in computer capabilities” (which would be eligible subject matter) or instead “on a process that qualifies as an ‘abstract idea’ for which *computers are invoked merely as a tool*” (which would be ineligible subject matter). *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36, 1338 (Fed. Cir. 2016) (emphasis added). “If the claims are not directed to an abstract idea [or other patent-ineligible concept], the inquiry ends. If the claims are ‘directed to’ an abstract idea, then the inquiry proceeds to the second step of the *Alice* framework.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016).

The second step in the *Alice* framework is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 78, 79 (2012)). In other words, the second step is to “search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* at 2355 (citing *Mayo*, 566 U.S. at 72–73).

The USPTO recently published revised guidance on the application of § 101. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Memorandum”). *This new guidance is*

*applied in this opinion.* Under the 2019 Memorandum guidance, we first look to whether the claim recites:

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

(2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (“MPEP”) § 2106.05(a)–(c), (e)–(h)).<sup>12</sup> 84 Fed. Reg. at 51–52, 55.

A claim that integrates a judicial exception into a practical application applies, relies on, or uses 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. 84 Fed. Reg. at 54. When the judicial exception is so integrated, then the claim is not directed to a judicial exception and is patent-eligible under § 101. 84 Fed. Reg. at 54.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then evaluate whether the claim provides an inventive concept. 84 Fed. Reg. at 56; *Alice*, 134 S. Ct. at 2350, 2355. For example, we 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

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<sup>12</sup> The references to the MPEP are to the Ninth Edition, Revision 08-2017 (rev. Jan. 2018).

(4) simply appends well-understood, routine, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. 84 Fed. Reg. at 56.

Here, the Examiner finds the steps of claims 1 and 11 “are similar to a mathematical relationship or formula,” and therefore the claims are directed to an abstract idea. (Final Act. 11–12.) Appellant contends the claims are not directed to an abstract idea because the claims solve problems arising in a specific technical area—“the realm of health-cost education . . . [by] informing a patient about monetary savings and health benefits due to education about patient-specific health parameters.” (App. Br. 13.) Appellant also argues the claims are patent-eligible because they improve another technology or field by “providing the updated cost of each health index parameter and the updated aggregate cost to the user in real time,” and “as the health index parameters are updated, a display upon which the user is viewing the costs on a graphical user interface (GUI) is updated in real time.” (Reply Br. 3–4.)

Appellant’s arguments are persuasive only in part. Particularly, we agree with Appellant that independent claims 1 and 11 do not recite a mathematical relationship, formula, or equation. (App. Br. 8, 11.) Under the 2019 Memorandum guidance, however, claims 1 and 11 as a whole recite a judicial exception of a method of *organizing human activity*. In particular, the claims allow a user to determine how to change his or her lifestyle in order to realize monetary savings, which is a method of managing personal behavior by following rules or instructions. (*See Spec.* ¶ 2; Title.)

Under the 2019 Memorandum guidance, we are further persuaded the claims *integrate the judicial exception into a practical application*. Particularly, claim 1 (and similarly claim 11) recites a combination of additional elements including receiving individual health index parameter values, calculating a cost of each health index parameter and aggregating the costs, providing the health index parameter costs and aggregate cost to the user, updating the costs of each health index parameter and updating the aggregate cost based on at least one adjusted health index parameter value, and providing the updated health index parameter costs and updated aggregate cost to the user in real time. The claim as a whole integrates the method of organizing human activity into a practical application.

Specifically, the additional claim elements recite a specific improvement over prior art systems by allowing a user “to adjust one or more health index parameters to see [in real time] what the cost savings will be if the user adjusts his health behavior (e.g., by losing weight and reducing BMI, quitting smoking, etc.).” (*See Spec.* ¶¶ 39, 60–61.) The claimed invention “provides a visual tool via which a user is encouraged to improve his health, thereby improving his work performance and reducing his and/or his employer’s healthcare costs.” (*See Spec.* ¶¶ 39, 66.) The visual tool is a health index calculator that can calculate a monetary reward in the form of health cost savings for improving the user’s health and habits, and calculate an aggregate monetary amount that one or more bad health behaviors cost the user per unit of time, thereby driving health behavior change in order to decrease health care cost and produce a more healthy individual. (*See Spec.* ¶¶ 2, 22, 26–28, 28, 54.) *See Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057, 1060–61, 1066–68 (Fed. Cir. 2011) (claiming an

immunization step that is a meaningful limitation beyond generally linking the use of the judicial exception to a particular technological environment, because the immunization step integrates an abstract idea of data comparison into a specific process that lowers the risk that immunized patients will later develop chronic immune-mediated diseases); MPEP § 2106.05(e).

Additionally, claims 1 and 11 recite components and techniques that generate *useful new data* (updated aggregate cost based on adjusted health index parameters, provided to the user in real time) that incentivizes the user to improve his health. *See Electric Power Group, LLC v. Alstom, S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (providing that a “set of components or methods, such as measurement devices or techniques, that would generate new data” is “arguably inventive”); MPEP § 2106.05(a).

Because claims 1 and 11 integrate the judicial exception into a practical application, we find claims 1 and 11, and their dependent claims 2, 4–10, 12, and 14–18 are not directed to a judicial exception (abstract idea) and are patent-eligible under § 101. For these reasons, we do not sustain the Examiner’s rejection of claims 1, 2, 4–12, and 14–18 as directed to non-statutory subject matter under 35 U.S.C. § 101.

*Rejection of Claims 1, 2, 4–12, and 14–18 under § 103*

With respect to claims 1 and 11, Appellant contends “Quit It Now does not disclose health index parameters” or “anything related to *health index parameters*”; rather, “Quit It Now discloses parameters related to packs of cigarettes and alcoholic drinks.” (Reply Br. 8.) Appellant also argues Skelly does not disclose that “a cost of each individual parameter (e.g., biometric data *and* health behavior data) is calculated/updated,” as

recited in claims 1 and 11. (Reply Br. 9; App. Br. 18–19.)<sup>13</sup> Rather, Skelly merely discloses “providing a tabulation of *insurance* costs of a user’s total medical costs, and not for costs calculated exclusively based on individual parameters such as blood pressure, glucose levels, or weight.” (Reply Br. 9.) We do not agree.

We agree with and adopt the Examiner’s findings as our own (Ans. 39; Final Act. 22–23, 26–27.) Particularly, we agree with the Examiner that Appellant is addressing the references separately rather than the combination of teachings proposed by the Examiner. (Ans. 39.) The Examiner cited (i) Quit It Now for teaching “calculating a cost of each health index parameter” wherein “the health index parameter values include values related to health behavior data associated with the user,” and (ii) Skelly for teaching “calculat[ing] costs for health index parameters related to biometric data associated with a user,” as required by claims 1 and 11. (Final Act. 23, 26–27 (citing Quit It Now 1; Skelly ¶¶ 10–11, 59–61).) We agree with the Examiner that Quit It Now’s calculator inputs numbers for cigarette packs smoked and drinks consumed in a particular timeframe, which is commensurate with receiving “health index parameter values” for “health behavior data associated with the user” as claimed and described in Appellant’s Specification.<sup>14</sup> (Final Act. 26.) Quit It Now further teaches

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<sup>13</sup> In the Reply Brief, Appellant argues against *claim 3 and 13* solely because the Examiner’s Answer stated “Amendment F [which cancelled claims 3 and 13] will not be entered.” (See Ans. 31; Reply Br. 9.) As discussed *supra*, however, Amendment F has in fact been entered by the Examiner’s Advisory Action dated March 3, 2017. Thus, our analysis discusses claims 1 and 11 as amended by Amendment F to incorporate the features of claims 3 and 13.

<sup>14</sup> Appellant’s Specification describes “[t]he health index parameter

calculating and updating a cost (monthly expenditures for cigarettes and drinks) of each health index parameter designating health behavior data, as recited in claims 1 and 11. (Final Act. 23.)

Regarding Skelly, the Examiner finds it calculates and updates a cost of a health index parameter having values (BMI, cholesterol, and blood pressure values shown under Health Profile tab 120 in Skelly’s Figure 5) related to biometric data associated with the user, as recited in claims 1 and 11. (Final Act. 26; *see* Skelly ¶¶ 59–61, 65–66, 73, Figs. 5, 7, 7A–7B.) We agree with the Examiner’s findings because the skilled artisan would have understood Skelly is calculating a *cost* for BMI, cholesterol, and blood pressure levels, in order to estimate the user’s future healthcare/health insurance cost. (*See* Skelly Figs. 7, 7A–7B.) We also note claims 1 and 11 do not require a “health index parameter” to include *only one* of BMI, cholesterol, and blood pressure, and further do not require the calculated cost of each health index parameter to be a cost “calculated exclusively based on individual parameters such as blood pressure, glucose levels, or weight” as Appellant asserts. (Reply Br. 9.)<sup>15</sup> The Examiner has also articulated sufficient reasoning for combining the features of Quit It Now’s and Skelly’s calculators, which Appellant does not address. (Final Act. 27.)

For these reasons, we sustain the Examiner’s rejection of independent claims 1 and 11 under § 103 as unpatentable over Quit It Now and Skelly.

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information includes . . . health behavior data 26 (e.g., number of packs of cigarettes smoked per day, alcoholic drinks consumed per day, etc.).” (*See* Spec. ¶¶ 23–24.)

<sup>15</sup> Claim 1, for example, recites what the “health index parameter *values*” are (“the health index parameter values including values related to biometric data associated with the user and health behavior data associated with the user”), but does not specify what “each health index *parameter*” is.

Appellant contends the rejections of dependent claims 2, 4–10, 12, and 14–18 are in error for the same reasons as claims 1 and 11. (App. Br. 18–25.) Appellant further recites the language of claims 2, 4–10, 12, and 14–18 and asserts the dependency from claims 1 and 11 “is not the sole reason for the allowability” of the dependent claims. (App. Br. 19–25.) Such arguments are not substantive arguments of Examiner error. (*See* 37 C.F.R. 41.37(c)(1)(iv) (2013) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”).) Thus, for the same reasons as claims 1 and 11, we sustain the § 103 rejections of dependent claims 2, 4–10, 12, and 14–18, which Appellant does not argue with particularity.

#### DECISION

The Examiner’s decision rejecting claims 1, 4, 5, 9–11, 14, 17, and 18 under 35 U.S.C. § 112(a) is reversed.

The Examiner’s decision rejecting claims 1, 2, 4–12, and 14–18 under 35 U.S.C. § 101 is reversed.

The Examiner’s decision rejecting claims 1, 2, 4–12, and 14–18 under 35 U.S.C. § 103 is affirmed.

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

AFFIRMED