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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/967,517	08/15/2013	Michael Farrell	RESMED 3.9-065 CC (897)	2774
147311	7590	09/11/2019	EXAMINER	
Botos Churchill IP Law LLP 430 Mountain Avenue Suite 401 New Providence, NJ 07974			DOUGLAS, STEVEN O	
			ART UNIT	PAPER NUMBER
			3649	
			NOTIFICATION DATE	DELIVERY MODE
			09/11/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL FARRELL,
MALCOLM RONALD HEBBLEWHITE,
DEIRDRE STEWART, ANN TISTHAMMER,
MAYA VANCE, and ROBIN RANDOLPH

Appeal 2017-011666
Application 13/967,517
Technology Center 3600

Before EDWARD A. BROWN, JILL D. HILL, and LEE L. STEPINA,
Administrative Patent Judges.

HILL, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Michael Farrell et al. (“Appellants”)¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s final decision rejecting claims 1–9, 11–15, and 17–21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellants’ identify the Assignee ResMed Limited, as the real party in interest. Appeal Br. 2.

BACKGROUND

Independent claims 1 and 15 are pending. Independent claim 1, reproduced below, illustrates the claimed invention:

1. An apparatus for assessing patient breathing and cardiovascular condition of a patient comprising:
 - a sensor for monitoring the cardiovascular condition of the patient;
 - a storage medium for storing data regarding the breathing and cardiovascular condition of the patient;
 - a processor in communication with the storage medium, the processor being configured to prompt the patient with a series of different queries from a questionnaire relating to patient demographic, patient breathing and cardiovascular condition;
 - a display for presenting the patient with the series of queries; and
 - a data entry device for receiving responses to the series of queries from the patient;wherein the processor is configured to tally positive responses to the series of queries to generate a sleep disordered breathing index, compare the sleep disordered breathing index to one or more thresholds, and determine whether there is a need for a full sleep disordered breathing assessment.

REJECTIONS

- I. Claims 1–9, 11–15, and 17–21 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more. Ans. 6.
- II. Claims 1–6, 9, 11–15, and 17–21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Wright (US 2002/0185130 A1, pub. Dec. 12, 2002) and Walker (US 2007/0250345 A1, pub. Oct. 25, 2007). Final Act. 2.

III. Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Wright, Walker, and Stahmann (US 2005/0115561 A1, pub. June 2, 2005). Final Act. 5.

ANALYSIS

Rejection I – Section 101

The Examiner finds that claims 1–9, 11–15, and 17–21 are directed to a judicial exception without significantly more. Ans. 6. According to the Examiner, the claims are “directed to a method and apparatus for assessing breathing and cardiovascular condition of a patient,” which involves “no more than a human activity that can be manually performed by a practitioner involving verbal conversation, tallying responses, calculating and determining steps partly through use of a conventional computing device that amounts to no more than an abstract idea.” *Id.* (citing *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208 (2014)). The Examiner further finds that claim 1 “does not include additional elements that are sufficient to amount to significantly more than the judicial exception because the claim only requires”: (1) “monitoring the cardiovascular condition of a patient with a sensor” (e.g., taking a patient’s pulse manually or via a stethoscope, pulse oximeter, EEG, or flow sensor); “a storage medium” (e.g., a practitioner’s memory or note pad); (3) “prompting the patient with a series of different queries with a processor” (e.g., via a conventional computer having a display and a keyboard); (4) “tallying positive responses to the series of queries using the processor” (e.g., using the conventional computer); and (5) “determining whether there is a need for a full sleep disordered breathing assessment using the processor” (e.g., using the

conventional computer “to aid the practitioner in making a mental decision to order a full sleep disordered breathing assessment.”). *Id.* at 7.

Appellants argue claims 1–9, 11–15, and 17–21 as a group. Reply Br. 7. We select claim 1 as representative. Claims 2–9, 11–15, and 17–21 stand or fall with claim 1.

Appellants contend that the Examiner has provided “no facts and no analysis . . . to support [the] conclusory assertions” that the claims are directed to an abstract idea. Reply Br. 4. According to Appellants “[t]he Answer simply states that the ‘abstract idea’ allegedly corresponds to concepts identified as abstract ideas by the court in . . . [*Alice*], with no further clarification.” *Id.* (emphasis omitted). Appellants continue that the Examiner not explained which “abstract ideas identified in *Alice*” cover the claims, and “there is no explanation of how the abstract ideas identified in *Alice* correspond to the features of claim 1.” *Id.* Appellants argue that, even if “the claims are abstract for being directed to ‘certain methods of organizing human activities,’ the claimed features do not support this assertion,” because “claim 1 is directed to an ‘apparatus’ and claim 15 is directed to ‘a method’ where a processor” tallies and calculates, which are not methods of organizing human activities. *Id.* at 4–5 (emphasis omitted). Appellants conclude that the Examiner’s *Alice* step 2A analysis is improper, because “the Examiner does not satisfy the burden of explaining how the holding of how the relied-upon case law (i.e., *Alice*) is directly applicable to the features as claimed.” *Id.* at 5.

Appellants also argue that “the claims fully satisfy the requirements of § 101,” because “the claimed features amount to significantly more than the purported ‘abstract idea’” and satisfy *Alice* step 2B. *Id.* at 5. Appellants

contend that the “significantly more” includes claim 15’s recitation of (1) “monitoring . . . with a sensor,” (2) tallying . . . queries with a processor,” (3) calculating a probability . . . with the processor,” and (4) determining . . . using the processor.” *Id.* According to Appellants, “the claimed features require steps which cannot be performed either mentally or by hand. In fact, the claims explicitly state that ‘a sensor’ and ‘a processor’ perform entire steps.” *Id.*

Appellants further argue that the Examiner’s allegation that the claims use a conventional computer device is contrary to Federal Circuit holdings, “such as in *DDR Holdings* and *Enfish*, where the Federal Circuit has held that when a general purpose processor is configured to operate in connection with an improved method or system, a claim may recite such a processor as part of patent eligible subject matter.” *Id.* at 6 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1249 (Fed. Cir. 2014); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)). Appellants argue that independent claims 1 and 15 are analogous to the claims presented in *DDR Holdings*, and satisfy § 101, by yielding a desired result “(e.g., treating respiratory disorders in cardiovascular disease patients or potential cardiovascular disease patients” in a way that is not merely routine and conventional. *Id.* Appellants also contend that, similar to *Enfish*, the claims “are directed to a ‘specific implementation of a solution to a problem’, in particular ‘to yield a desired result’ (e.g., treating respiratory disorders in cardiovascular disease patients or potential cardiovascular disease patients.” *Id.* at 7 (citing Spec. ¶ 11). Appellants contend that the Specification “explains throughout how the technology solves the identified problem.” *Id.* (citing Spec. ¶¶ 46, 48, 49, 70–72). Appellants continue that “the claims

themselves disclose improvements in existing computer technology such as an ‘apparatus’ and ‘a method’ where a processor tall[ies] . . . calculate[s] . . . by comparing,” which “plays a significant part in permitting the claimed features to be performed to implement the solution to the outlined problem.” *Id.*

Section 101 of the Patent Act provides, “[w]hoever 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.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, i.e., the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611);

mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (citation omitted).

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 (Jan. 7, 2019) (“Memorandum”). Under that guidance, we first look to whether the claim recites:

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

(2) additional elements that integrate the judicial exception into a practical application (*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 2019 Revised Guidance.

Step 2A, Prong One

The Memorandum instructs us first to determine whether each claim recites a judicial exception to patent eligibility. 84 Fed. Reg. at 54. The Memorandum identifies three judicially-excepted groupings: (1) mathematical concepts, (2) certain methods of organizing human activity such as fundamental economic practices, and (3) mental processes. *Id.* at 52.

The Examiner determines that claim 1 recites an abstract idea. *See* Ans. 6 (the claims are “directed to a method and apparatus . . . which involves ‘no more than a human activity that can be manually performed by a practitioner . . . partly through use of a conventional computing device that amounts to no more than an abstract idea.’”). We agree with the Examiner and, for the reasons given below, determine that claim 1 recites an abstract idea that encompasses a mental process.

Claim 1 recites a processor configured to “prompt the patient with . . . queries from a questionnaire relating to patient demographic, patient breathing and cardiovascular condition,” and “tally positive responses to the . . . queries to generate a sleep disordered breathing index, compare the sleep disordered breathing index to one or more thresholds, and determine whether there is a need for a full sleep disordered breathing assessment.”

The Guidance identifies mental processes as one of the enumerated groupings of abstract ideas. A claim recites a mental process when it encompasses acts people can perform using their minds or pen and paper. *See, e.g., CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011) (determining that a claim whose “steps can be performed in the human mind, or by a human using a pen and paper” is directed to an

unpatentable mental process). This is true even if the claim recites use of a generic computer component to perform the process steps. *See, e.g., Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (“Courts have examined claims that required the use of a computer and still found that the underlying, patent-ineligible invention could be performed via pen and paper or in a person’s mind.”); *see also* 2019 Eligibility Guidance 84 Fed. Reg. at 52 n.14 (“If a claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation generic computer components, then it is still in the mental process category unless the claim cannot practically be performed in the mind.”).

The human mind, or a human with a pad and paper, can perform each of the claimed steps, including “prompt[ing] the patient with . . . queries from a questionnaire relating to patient demographic, patient breathing and cardiovascular condition,” and “tally[ing] positive responses to the . . . queries to generate a sleep disordered breathing index, compar[ing] the sleep disordered breathing index to one or more thresholds, and determin[ing] whether there is a need for a full sleep disordered breathing assessment.” Appellants provide no evidence or explanation to the contrary.

Claim 1 also recites an apparatus for assessing patient breathing and cardiovascular condition of a patient, the apparatus comprising “a sensor for monitoring the cardiovascular condition of the patient,” “a storage medium for storing data regarding the breathing and cardiovascular condition of the patient,” “a processor in communication with the storage medium,” “a display for presenting the patient with the series of queries,” and “a data entry device for receiving responses to the series of queries.”

We determine that each of these apparatus elements, including the sensor, processor, storage medium, display, and data entry device are generic components. Appellants provide no evidence or explanation to the contrary. As explained above, mental processes remain abstract ideas even when using a generic computer component to perform the process steps. *Versata*, 793 F.3d at 1335 (claims requiring use of a computer may still be patent-ineligible when they can be performed via pen and paper or in a person's mind); *see also* 2019 Eligibility Guidance, 84 Fed. Reg. at 52 n.14 (a claim covering performance in the mind, but for reciting generic computer components, is still a mental process unless it cannot practically be performed in the mind). The recited apparatus elements are merely tools used to implement the abstract idea. We determine that independent claim 1 recites a mental process. Claim 15, reciting a method having similar steps performed on similar conventional components, likewise recites a mental process. Further, the specific queries set forth in dependent claims 2–8 are mental processes. Likewise, the following limitations are also mental processes performed on a conventional component: (1) the processor being configured to report the sleep disordered breathing index (claims 9, 19), identify a low probability of sleep disordered breathing when the sleep disordered breathing index is at or below a first threshold of 1 (claims 11, 12, 15), identify a high probability of sleep disordered breathing when the sleep disordered breathing index at or above a second threshold of 4 (claims 13, 14, 18), or combine the sleep disordered breathing index and an apnea hypopnea index, and relay the combined information (claim 21); and (2) the sensor continuously monitoring a cardiovascular condition of the patient (claim 20).

Step 2A, Prong Two

Having determined that claims 1–6, 9, 11–15, and 17–21 recite a judicial exception, our analysis under the Guidance turns on determining whether the claims include additional elements integrating the exception into a practical application. *See* MPEP § 2106.05(a)–(c), (e)–(h). As explained above, each of the claim limitations is drawn to a mental process, and data input, output, and storage are performed on generic components. There are no additional elements in the claims that integrate the exception into a practical application. The recited monitoring, storing, presenting, and receiving, steps are data gathering, storage, and display recited generally. *See Elec. Power Grp., LLC v. Alston S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (characterizing certain steps of collecting information, analyzing information by steps people go through in their minds, and presenting the results, without more, as abstract ideas).

For these reasons, we determine that the claims do not integrate the judicial exception into a practical application.

Step 2B

In *Alice*, step 2, we consider the elements of the claim, both individually and as an ordered combination, to assess whether any additional elements transform the nature of the claim into a patent eligible subject matter, i.e., whether the claims any specific limitations beyond the judicial exception that is not well-understood, routine, and conventional in the field. *See* Memorandum, 84 Fed. Reg. at 56. Appellants contend that their claimed features “amount to significantly more than the purported ‘abstract idea’” satisfying *Alice* step 2B, and that the “significantly more” includes claim 15’s recitation of (1) “monitoring . . . with a sensor,” (2) tallying . . .

queries with a processor,” (3) calculating a probability . . . with the processor,” and (4) determining . . . using the processor.” Reply Br. 5.

According to Appellants, “the claimed features require steps which cannot be performed either mentally or by hand. In fact, the claims explicitly state that ‘a sensor’ and ‘a processor’ perform entire steps.” *Id.* As explained above, however, each of the claim limitations is drawn to a mental process, and data input, output, and storage utilize well-known components. The recited apparatus elements are merely tools used to implement the abstract idea, and do not transform the nature of the claim into a patent eligible subject matter.

Unlike *DDR Holdings* and *Enfish*, Appellants claim using a processor to assess “respiratory disorders in cardiovascular disease patients or potential cardiovascular disease patients” which is not subject matter rooted in technology given that the Specification describes only the use of generic computer equipment used in a routine, conventional, and generic manner.

Appellants continue that “the claims themselves disclose improvements in existing computer technology such as an ‘apparatus’ and ‘a method’ where a processor” tallies, calculates by comparing, which “plays a significant part in permitting the claimed features to be performed to implement the solution to the outlined problem.” *Id.* Further, the claims in *Enfish* were directed to a self-referential data table, which differs from the scope of Appellants’ claims.

For the reasons set forth above, we sustain the rejection of claims 1–9, 11–15, and 17–21 as directed to a judicial exception without significantly more.

Rejection II – Obviousness of Claims 1–6, 9, 11–15, and 17–21

The Examiner finds that Wright discloses an apparatus for assessing breathing and cardiovascular condition comprising a handheld computer 12 having a storage medium, processor, display, data entry, and sensor 24 for monitoring the cardiovascular condition of the patient. Final Act. 2. The Examiner also finds that Wright discloses compiling responses to a series of queries about patient breathing and cardiovascular condition, the responses being “tallied by the healthcare professional (i.e. by either mentally or even by manually writing down a patient’s responses) to determine an implied sleep disordered breathing index,” the index being “as simple as an assessment of how ever many positive responses compared to the total number of questions asked the patient in the series of queries.” *Id.* (citing Wright ¶¶ 50–60). The Examiner then finds that, based on the query responses “an assessment by a trained sleep or respiratory physician determines whether an in-patient sleep study should be conducted.” *Id.* at 2–3 (citing Wright ¶ 61) (emphasis omitted).

The Examiner finds that Wright fails to disclose (1) queries “from a questionnaire relating to patient demographic,” (2) using a data entry device to receive query responses, and (3) using a processor to generate a sleep disordered index. *Id.* at 3. The Examiner finds, however, that Walker discloses an apparatus for treating sleep disorders using queries from a questionnaire “about patient demographic . . . to compile a complete medical record.” *Id.* at 3 (citing Walker ¶¶ 14, 15). The Examiner concludes that it would have been obvious to a skilled artisan to modify Wright’s patient queries to include queries about patient demographic in view of the teachings of the Walker, “to compile a complete medical record.” *Id.* The Examiner also finds that Walker uses “a tablet-type computer to aid

healthcare professionals in tabulating and managing responses relating to queries relating to a sleep study so that entered information can be assessed electronically.” *Id.* (citing Walker ¶¶ 14, 15). The Examiner concludes that it would have been obvious to a skilled artisan to use a tablet “with its associated display and processor to receive the responses to the series of queries and utilize[e] the processor to generate the sleep disordered index in view of the teachings of Walker . . . to electronically tabulate and manage responses” to the patient queries “so that entered information can be assessed electronically,” rather than via conventional manual assessment. *Id.* at 3–4 (citing Walker ¶¶ 14, 15).

Appellants argue claims 1–6, 9, 11–15, and 17–21 as a group. Appeal Br. 6–9. We select claim 1 as representative. Claims 2–6, 9, 11–15, and 17–21 stand or fall with claim 1. Appellants argue that

Wright fails to disclose a processor configured to (1) prompt the patient with a series of different queries from a questionnaire relating to patient demographic, patient breathing and cardiovascular condition, (2) tally positive responses to the series of queries to generate a sleep disordered breathing index, (3) compare the sleep disordered breathing index to one or more thresholds, and (4) determine whether there is a need for a full sleep disordered breathing assessment.

Appeal Br. 7.

Appellants further argue that “neither Wright nor Walker, alone or in combination[,] teaches or suggest[s] a processor that is capable of . . . determining whether there is a need for a full sleep disordered breathing assessment.” Appeal Br. 7. According to Appellants, Wright relies on a physician to determine whether a full sleep disordered breathing assessment is needed, and Walker assumes that a polysomnogram has already been conducted before a device is used for data entry. *Id.* Therefore, Appellants

argue, a skilled artisan, considered Wright and Walker, would have relied on a physician to review questionnaire responses, determine a need for a full sleep assessment, and provide the patient with Walker's hand-held device thereafter.

The Examiner responds that Wright discloses the physician determining whether to do a full sleep disordered breathing assessment, and Walker discloses using a hand-held computer to receive and tabulate ("assess") patient questionnaire responses. Ans. 11. The Examiner reasons that, in the proposed combination, a physician would use Walker's "tablet-type device (i.e. and its processor)" to determine whether there is a need for a full sleep disordered breathing assessment. *Id.*

Wright discloses a method and apparatus for assessing patient breathing and cardiovascular condition. *See* Wright, Abstract. Wright's device includes (1) a sensor for monitoring a cardiovascular condition of the patient (*id.* ¶¶ 29, 34), (2) a storage medium for data regarding the breathing and cardiovascular condition of the patient (*id.* at 30), (3) a hand-held device to present a patient with queries and allow responses to be input, the hand-held device including a data entry device, a display, and a processor (*id.* ¶¶ 29–30, 47 ("a physician can conduct a sleep history assessment of the patient with the questionnaire appearing on the handheld device")). Wright's processor prompts the patient with a series of queries from a questionnaire, the questions regarding patient breathing and cardiovascular condition, but not patient demographic. Wright's processor generates questions and flags certain responses that indicate the need for a more detailed physician assessment. *Id.* ¶¶ 47, 49–61. Wright also discloses creating an index, and the index being compared to a threshold, to determine whether a patient has

apnea. *Id.* at 61–63. The index, however, is not created merely from query responses. *Id.*

Walker discloses a system and method for diagnosing sleep disorders, which explicitly prompts a patient with queries regarding patient demographic. *See* Walker Abstract. Walker uses computer input of patient information via a keyboard or GUI, including patient demographic information. *Id.* ¶ 14. The patient queries are displayed and answers are input (*id.* ¶ 14 (“[t]he method allows for computer input of information in a user-friendly format eliminating the need for paper records” and directly into a database ¶¶ 17–23), and stored (*id.* ¶¶ 24–25)).

Given the disclosure of Wright and Walker, we disagree with Appellants’ contention that Wright relies on a physician to determine whether a full sleep disordered breathing assessment is needed. Wright discloses that:

Upon admission to a rehabilitation clinic, the physician can conduct a sleep history assessment of the patient with the questionnaire appearing on the hand-held device and the results being sent to the apparatus. In conjunction with the assessment, the apparatus then may recommend particular further tests to be done, such as oxygen saturation, and overnight sleep studies.

Wright ¶ 47. This disclosure does not explicitly rely on the physician to input questionnaire responses – indeed, the hand-held device could be provided to the patient to provide responses. Thus, Wright discloses “a data entry device for receiving responses to the series of queries from the patient.” Further, this excerpt established that Wright’s apparatus assesses questionnaire responses to determine whether an overnight sleep study is needed. Therefore, we are not persuaded by Appellants argument that neither Wright nor Walker teaches “a processor that is capable of . . .

determining whether there is a need for a full sleep disordered breathing assessment.” Appeal Br. 7.

Further, we discern no error in the Examiner’s conclusion that it would have been obvious to a skilled artisan to use the disclosed hand-held computer “to electronically tabulate and manage [query] responses . . . so that entered information can be assessed electronically,” rather than “what would have been conventionally done manually in the past.” Final Act. 3–4.

Appellants also argue that the Examiner’s proposed combination of Wright and Walker employs impermissible hindsight, because it relies on information gleaned solely from Applicants’ Specification. Appeal Br. 8–9 (citations omitted). According to Appellants, Walker does not determine whether there is a need for a full sleep disordered breathing assessment, assuming that such a determination has already been made, and the Examiner relies on a “general notion of using electronics instead of manual collection of data to allegedly support the combination of Wright and Walker in having a processor” determine whether full sleep disordered breathing assessment is needed. *Id.* at 9. The Office Action suggests using Walker’s tablet to do the tasks specifically delegated to the physician in Wright. Appellants are correct regarding the Examiner’s reasoning, which derives from Walker disclosing that it is desirable to electronically capture and store patient data before, during, and after a sleep study (*see* Walker, Abstract) using tablet computers with user-friendly GUIs. Walker is directed more specifically to user-friendly data entry to facilitate paperless patient data records, not whether the patient or a health care professional is performing data entry via the GUI. However, Walker’s teaching of automating patient demographic questionnaire response entry with a tablet

namely, facilitating paperless patient data records — provides a rational reason why a skilled artisan would automate response entry for Wright’s queries, allowing Wright’s processor to determine a need for a more detailed physician assessment.

For the reasons explained above, we sustain the rejection of claim 1 as unpatentable over Wright and Walker. Claims 2–6, 9, 11–15, and 17–21 fall with claim 1.

Rejection III – Obviousness of Claims 7 and 8

Claims 7 and 8 depend from claim 1. Appellants make no argument that claims 7 and 8 would be patentable over Wright, Walker, and Stahmann, if claim 1 is not patentable over Wright and Walker. For the reasons set forth above in our analysis of Rejection II, we sustain Rejection III.

DECISION

We AFFIRM the rejection of claims 1–9, 11–15, and 17–21 as directed to a judicial exception.

We AFFIRM the rejection of claims 1–6, 9, 11–15, and 17–21 as unpatentable over Wright and Walker.

We AFFIRM the rejection of claims 7 and 8 as unpatentable over Wright, Walker, and Stahmann.

AFFIRMED