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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK A. HOFFMAN, HUGH RYAN,
BHARAT SUTARIYA, LEO V. PEREZ,
and JOHN KUCKELMAN

Appeal 2018-000396
Application 13/269,244[1]
Technology Center 3600

Before HUBERT C. LORIN, ANTON W. FETTING, and CYNTHIA L. MURPHY, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE[2]

Mark A. Hoffman, Hugh Ryan, Bharat Sutariya, Leo V. Perez, and John Kuckelman (Appellants) seek review under 35 U.S.C. § 134 of the

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[1] According to Appellants, the real party in interest is Cerner Innovation, Inc. (Appeal Br. 1).

[2] Our decision will make reference to the Appellants' Appeal Brief filed March 27, 2017 ("Br."); the Examiner's Answer mailed July 28, 2017 ("Ans."); and the Final Office Action mailed September 26, 2016 ("Final Act.").

Examiner's Final rejection of claims 1–20, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

The Appellants invented a way of surveillance and monitoring of a patient's risk for developing a particular disease or condition. Specification ¶ 4.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

> 1. A method carried out by a computing device having a processor and a memory for enabling multi-site surveillance and decision support for a patient's medical care,
> the method comprising:
> [1] receiving,
> from a first client application residing on at least one computing device associated with a first medical organization,
> a first set of patient information corresponding to a patient who has received medical treatment at the first medical organization;
> [2] determining that an active risk assessment array, having one or more nodes, exists for the patient,
> wherein the active risk assessment array represents the patient's risk of developing a particular disease or condition, and
> wherein each node of the one or more nodes represents a distinct parameter for the particular disease or condition or patient information;
> [3] determining that the active risk assessment array that is specific to the particular disease or condition is currently active,
> wherein currently active is specific to a duration of time within which the particular disease or condition can occur in

the patient for a first node of the active risk assessment array corresponding to the first set of patient information,
populating a value of the first node with at least a portion of the first set of patient information;
[4] receiving,
from a second client application residing on at least one computing device associated with a second medical organization,
a second set of patient information,
wherein the patient has received medical treatment at the second medical organization,
and
wherein the first medical organization and the second medical organization maintain separate medical record systems;
[5] determining,
based on cross-venue recognition,
that the first set of patient information and the second set of patient information correspond to the patient;
[6] for a second node
of the active risk assessment array corresponding to the second set of patient information,
populating the value of the second node with at least a portion of the second set of patient information;
[7] determining that the patient has met actionable criteria for being at risk for the particular disease or condition
based on at least the first and second nodes of the active risk assessment array;
and
[8] providing a notification that the actionable criteria have been met.

The Examiner relies upon the following prior art:

Joao	US 2002/0032583 A1	Mar. 14, 2002
Michon	US 2006/0218010 A1	Sept. 28, 2006

Claims 1–20 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1–20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Michon and Joao.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

The issues of obviousness turn primarily on whether Michon does not teach or suggest determining that an active risk assessment array exists.

FACTS PERTINENT TO THE ISSUES

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

Facts Related to Appellants' Disclosure

01. Manager 202 builds a multi-site risk assessment array 216 for an individual patient. Multi-site risk assessment array 216 includes one or more state "nodes" or compartments for the individual patient. Each node in the array 216 represents a distinct parameter for a particular

condition or patient information. Array 216 includes a defined period of persistence based on the nature of the clinical utility of the particular condition. For example, an array for sepsis for the patient may last 48 hours while an array for controlled substance manipulation for the patient may last years. Spec. para. 37. This describes one embodiment of the disclosed invention. Spec. para. 29.

02. Arrays, as used herein, are a management system for monitoring the symptoms that a user has in reference to a particular disease or condition. This information, together, is called an array. Some boxes of an array may have patient information and some may not, indicating that patient information corresponding to the blank boxes has not yet been received from the medical organizations. It should be noted that arrays have a duration of time in which they remain active. Spec. para. 46.

Facts Related to the Prior Art

Michon

03. Michon is concerned with immunological informatics, and more particularly to acquiring, storing and utilizing immunologic information of individuals and populations in various commercial, research and governmental contexts. Michon para. 2.

04. Michon describes a biological sample being taken from one or more individuals and the sample submitted to one or more panels of assays. The results of the assays are stored

and analyzed by (i) calculating derived quantities which take the results of the assays as inputs, and (ii) submitting the results and the derived quantities to a set of rules, each of which has a defined output state. An appropriate recommendation as to one or more immunization or other interventions can be generated. The assay panel or panels can be chosen as a function of a defined demographic group or enterprise affinity into which the individual corresponds. A database can be maintained for storing and further processing of all immunologic informatics collected. Michon para. 16.

05. Immunologic information is to be understood in a broad sense, including any information which may be useful as an indicator of any immunological function of a mammalian body. More specifically, Michon describes acquiring information that is indicative of the immune status of an individual, processing that information, storing the raw information as well as the outputs from the processing stage, and of that information at various times and in various ways to recommend various actions such as prophylactic or further diagnostic interventions, or abstention from action, for individual or population. Michon exploits a number of advances in technology as well as advances in how people think about medical treatment. A number of immunological or immunological related (in a broad sense) assays can be administered to an

individual. Using modern technology such as, for example, the M1M Analyzer marketed by BioVeris™ Corporation, of Gaithersburg, Md., one can run a large number of assays, such as, for example 20, 40 or 60, and obtain results therefrom in a relatively short period of time. Michon para. 134.

06. Prior to elective surgery, it would benefit the patient and the attending surgeon to know the level of antibody protection to these infectious agents. An ImmunoScore panel could be tailored to meet these diagnostic needs and immunizations could be provided to those agents with available vaccine. In addition, following surgery patients could be screened for c reactive protein (CRP), tumor necrosis factor-alpha (TNF-.alpha.), IL-6, and soluble IL-2 receptor (sIL-2R) as possible early indicators of inflammation leading to sepsis. It is important to screen for a panel of analytes indicating sepsis, as one analyte is often not enough to get a proper diagnosis. Michon para. 1191.

Joao

07. Joao is directed to processing and/or for providing healthcare information and/or healthcare-related information. Joao para. 2.

ANALYSIS

Claims 1–20 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more

STEP 1[3]

Claim 1, as a method claim, nominally recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. The issue before us is whether it is directed to a judicial exception without significantly more.

STEP 2

The Supreme Court

> set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First,[] determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, "[w]hat else is there in the claims before us? To answer that question,[] consider the elements of each claim both individually and "as an ordered combination" to determine whether the additional elements "transform the nature of the claim" into a patent-eligible application. [The Court] described step two of this analysis as a search for an "'inventive concept'"—i.e., an element or combination of elements that is "sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself."

Alice Corp., Pty. Ltd. v CLS Bank Intl, 573 U.S. 208, 217–18 (2014) (citations omitted) (*citing Mayo Collaborative Services v. Prometheus*

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[3] For continuity of analysis, we adopt the steps nomenclature from 2019 Revised Patent Subject Matter Eligibility Guidance, 84 FR 50 (Jan. 7, 2019) ("2019 Guidance").

Laboratories, Inc., 566 U.S. 66 (2012)). To perform this test, we must first determine what the claims are directed to. This begins by determining whether the claims recite one of the judicial exceptions (a law of nature, a natural phenomenon, or an abstract idea). Then, if claims recite a judicial exception, determining whether the claims at issue are directed to the recited judicial exception, or whether the recited judicial exception is integrated into a practical application of that exception, i.e., that the claims "apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception." 2019 Guidance 54. If the claims are directed to a judicial exception, then finally determining whether the claims provide an inventive concept because the additional elements recited in the claims provide significantly more than the recited judicial exception.

STEP 2A Prong 1

Method claim 1 recites receiving two sets of patient information and determining they correspond to the patient; determining that an active risk assessment array exists and is active; populating a node with data; and determining and notifying that criteria have been met. Thus, claim 1 recites receiving, analyzing, updating, and transmitting data. None of the limitations recite technological implementation details for any of these steps, but instead recite only results desired by any and all possible means.

From this we see that claim 1 does not recite the judicial exceptions of either natural phenomena or laws of nature.

Under Supreme Court precedent, claims directed purely to an abstract idea are patent in-eligible. As set forth in the 2019 Guidance, which extracts

and synthesizes key concepts identified by the courts, abstract ideas include: (1) mathematical concepts;[4] (2) certain methods of organizing human activity;[5] and (3) mental processes.[6] Among those certain methods of organizing human activity listed in the 2019 Guidance are managing personal behavior or relationships and interactions between people. Like those concepts claim 1 recites the concept of patient monitoring. Specifically, claim 1 recites operations that would ordinarily take place in advising one to look for an active risk assessment array from two separate organizations and determining whether certain criteria have been met. The advice to look for an active risk assessment array from two separate organizations and determine whether certain criteria have been met involves risk assessment, which is a managerial act, and determining whether criteria are met, which is an act ordinarily performed in the stream of management by patient monitoring. For example, claim 1 recites "receiving . . . patient information," which is an activity that would take place whenever one is managing healthcare personnel. Similarly, claim 1 recites "determining that an active risk assessment array, having one or more nodes, exists for the

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

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

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

patient" and "determining . . . that the first set of patient information and the second set of patient information correspond to the patient," which are also characteristics of patient monitoring in healthcare management.

The Examiner determines the claims to be directed to comparing new and stored information and using rules to identify options. Final Act. 3.

The preamble to claim 1 recites that it is a method carried out by a computing device having a processor and a memory for enabling multi-site surveillance and decision support for a patient's medical care. The steps in claim 1 result in determining and notifying that the patient has met actionable criteria for being at risk for the particular disease or condition absent any technological mechanism other than a conventional computer for doing so.

As to the specific limitations, limitations 1–6 and 8 recite insignificant receiving, analyzing, updating, and transmitting of medical data including an active risk assessment array, which advise one to apply generic functions to get to these results. Limitation 7 is the only step associated with performing what the claim produces and recites determining that the active risk assessment array that is specific to the particular disease or condition is currently active, which is simply checking data that criteria are met. The limitations thus recite advice for looking for an active risk assessment array from two separate organizations and determining whether certain criteria have been met. To advocate looking for an active risk assessment array from two separate organizations and determining whether certain criteria have been met is conceptual advice for results desired and not technological operations.

The Specification at paragraph 4 recites that the invention relates to surveillance and monitoring of a patient's risk for developing a particular disease or condition. Thus, all this intrinsic evidence shows that claim 1 is directed to monitoring a patient's health risk, i.e. patient monitoring. This is consistent with the Examiner's determination.

This in turn is an example of managing personal behavior or relationships or interactions between people as a certain method of organizing human activity because monitoring patients is a process requiring coordination of patient, doctor, and related healthcare providers. The concept of patient monitoring as advised to be done by looking for an active risk assessment array from two separate organizations and determining whether certain criteria have been met is an idea for taking advantage of two separate data sources to coordinate the efforts of plural diagnostic efforts. The steps recited in claim 1 are part of using data from this idea.

Alternately, this is an example of concepts performed in the human mind as mental processes because the steps of receiving, analyzing, updating, and transmitting data mimic human thought processes of observation, evaluation, judgment, and opinion, perhaps with paper and pencil, where the data interpretation is perceptible only in the human mind. *See In re TLI Communications LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 1, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data reception, analysis, modification, and transmission and does not recite an improvement to a particular computer technology. *See, e.g.*, *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (Finding claims

not directed to an abstract idea because they "focused on a specific asserted improvement in computer animation."). As such, claim 1 is directed to receiving, analyzing, updating, and transmitting data, and not a technological implementation or application of that idea.

From this we conclude that at least to this degree, claim 1 is directed to patient monitoring by looking for an active risk assessment array from two separate organizations and determining whether certain criteria have been met.

STEP 2A Prong 2

The next issue is whether claim 1 not only recites, but is more precisely directed to this concept itself or whether it is instead directed to some technological implementation or application of, or improvement to, this concept; or, in the words of the 2019 Guidance, "integrated into a practical application".[7]

> At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. At some level, "all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. "[A]pplication[s]" of such concepts "'to a new and useful end,'" we have said, remain eligible for patent protection. Accordingly, in applying the § 101 exception, we must distinguish between patents that claim the "'buildin[g] block[s]'" of human ingenuity and those that integrate the building blocks into something more.

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

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

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

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

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

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

Taking the claim elements separately, the operation performed by the computer at each step of the process is expressed purely in terms of results, devoid of implementation details. Steps 1, 2, 4, and 5 are pure data gathering steps. Limitations describing the nature of the data do not alter this. Step 8 is insignificant post solution activity, such as storing, transmitting, or displaying the results. Steps 3, 6, and 7 recite generic computer processing expressed in terms of results desired by any and all possible means and so present no more than conceptual advice. All purported inventive aspects reside in how the data is interpreted and the

results desired, and not in how the process physically enforces such a data interpretation or in how the processing technologically achieves those results.

Viewed as a whole, Appellants' claim 1 simply recites the concept of patient monitoring by looking for an active risk assessment array from two separate organizations and determining whether certain criteria have been met as performed by a generic computer. This is no more than conceptual advice on the parameters for this concept and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

Claim 1 does not, for example, purport to improve the functioning of the computer itself. Nor does it affect an improvement in any other technology or technical field. The 37 pages of Specification spell out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of patient monitoring by looking for an active risk assessment array from two separate organizations and determining whether certain criteria have been met under different scenarios.[8] They do not describe any particular improvement in the manner a computer functions. Instead, claim 1 at issue amounts to nothing significantly more than an instruction to apply patient monitoring by looking for an active risk assessment array from two separate organizations and determining whether certain criteria have been met using some unspecified, generic computer. Per controlling case law,

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[8] The Specification describes including handheld devices, consumer electronics, general-purpose computers. Spec. para. 26.

that is not enough to transform an abstract idea into a patent-eligible invention. *See e.g., Alice*, 573 U.S. at 225–26.

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

We conclude that claim 1 is directed to achieving the result of patient monitoring by advising one to looking for an active risk assessment array from two separate organizations and determining whether certain criteria have been met as distinguished from a technological improvement for achieving or applying that result. This amounts to managing personal behavior or relationships or interactions between people, which fall within certain methods of organizing human activity that constitute abstract ideas. The claim does not integrate the judicial exception into a practical application.

STEP 2B

The next issue is whether claim 1 provides an inventive concept because the additional elements recited in the claim provide significantly more than the recited judicial exception. Taking the claim elements separately, the

function performed by the computer at each step of the process is purely conventional. Using a computer for receiving, analyzing, updating, and transmitting data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are generic, routine, conventional computer activities that are performed only for their conventional uses. *See Elec. Power Group v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); s*ee also In re Katz Interactive Call Processing Patent Litigation*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) ("Absent a possible narrower construction of the terms 'processing,' 'receiving,' and 'storing,' []those functions can be achieved by any general purpose computer without special programming."). None of these activities are used in some unconventional manner nor do any produce some unexpected result. Appellants do not contend they invented any of these activities. In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, "even if a process of collecting and analyzing information is 'limited to particular content' or a particular 'source,' that limitation does not make the collection and analysis other than abstract." *SAP America, Inc. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellants' claim 1 add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis-modification-transmission is equally generic and conventional. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction); *Inventor Holdings,*

LLC v. Bed Bath & Beyond, Inc., 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission); and *Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring). The ordering of the steps is therefore ordinary and conventional.

We conclude that claim 1 does not provide an inventive concept because the additional elements recited in the claim do not provide significantly more than the recited judicial exception.

REMAINING CLAIMS

Claim 1 is representative. The remaining method claims merely describe process parameters. We conclude that the method claims at issue are directed to a patent-ineligible concept itself, and not to the practical application of that concept.

As to the structural claims, they

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

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

LEGAL CONCLUSION

From these determinations we further determine that the claims do not recite an improvement to the functioning of the computer itself or to any other technology or technical field, a particular machine, a particular

transformation, or other meaningful limitations. From this we conclude the claims are directed to the judicial exception of the abstract idea of certain methods of organizing human activity as exemplified by patient monitoring by advising one to looking for an active risk assessment array from two separate organizations and determining whether certain criteria have been met, without significantly more.

APPELLANTS' ARGUMENTS

As to Appellants' Appeal Brief arguments, we adopt the Examiner's determinations and analysis from Final Action page 3 and Answer pages 27–34 and reach similar legal conclusions. In particular, we note the following.

We are not persuaded by Appellants' argument that "the claims are not directed to any long-standing fundamental practice that existed independent of computer technology. It cannot be reasonably said that the problems caused by changing operational instructions for claims processing rules is a long-standing fundamental practice that exists independent of computer technology." Br. 12 (emphasis omitted). As we determined supra, the claims are directed to monitoring patients. This is a long-standing fundamental practice that existed independent of computer technology. This is recited as being done by advising one to look for an active risk assessment array from two separate organizations and determine whether certain criteria have been met using some unspecified, generic computer. But this is conceptual advice to use this idea devoid of technological implementation details. As to changing operational details in response to rules as to how to adapt to conditions, this is age old contingency planning, again predating computer technology.

Claims 1–20 rejected under 35 U.S.C. § 103(a) as unpatentable over Michon and Joao

We adopt the Examiner's determinations and analysis from Final Action pages 4–26 and Answer pages 34–38 and reach similar legal conclusions. In particular, we note the following.

We are not persuaded by Appellants' argument that Michon does not teach or suggest determining that an active risk assessment array exists. Br. 14.

The Specification does not lexicographically define an active risk assessment array. An array is defined as information together for monitoring the symptoms that a user has in reference to a particular disease or condition. The definition does not further specify the nature of the reference, or the particularity of the disease or condition. Thus, information put together for monitoring a user's symptoms, where those symptoms might relate in some manner to some particular disease or condition is within the scope of an array. And as the definition does not further specify the nature of the monitoring, any information that would be useful in monitoring such symptoms is within the scope of an array. The plain meaning of an active risk assessment array is, then, information actively put together that could be useful for assessing the risk from the symptoms that a user has in reference to a particular disease or condition.

The claims do not recite or narrow the manner or implementation of how they determine that an active risk assessment array exists. Thus, simply accessing an array is within the scope of the recited determination. The claims also do not recite or narrow the manner or implementation by which the array is physically instantiated. Thus, a database of information

collected together, useful for monitoring the symptoms that a user has in reference to some particular disease or condition, containing fields (nodes), is within the scope of the recited array. Michon describes such a database containing information from biological assays.

> We are not persuaded by Appellants' argument that
>
> > the algorithms and rules of Michon are applied to assay results and stored medical data, and as such is not "an active risk assessment array," in that the algorithms do not relate to a patient who has received treatment at a first medical organization. *See generally*, Michon. Additionally, the active risk assessment array of independent claim 1 represents the patient's risk of developing a particular disease or condition and is made up of multiple nodes. *See claim 1 and as-filed Specification* at ¶¶ [0021] and [0037]. Michon does not use multiple nodes together to make a single active risk assessment array, as is recited by claim 1.

Br. 16. What the array represents is not at issue. Only whether the art describes determining the existence of such an active array is at issue. Every time the Michon's database is accessed for a particular set of data, that set is being actively used and the operating system is determining the existence of that data. Thus, Michon describes determining the existence of such an active array.

Appellants' referral to Specification paragraphs 21 and 37 is unhelpful. Both paragraphs describe an exemplary embodiment rather than a definition. The argument as to multiple nodes fails to consider that the claims do not narrow the scope of nodes. As we find supra, the fields in Michon are within the scope of such multiple nodes.

CONCLUSIONS OF LAW

The rejection of claims 1–20 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

The rejection of claims 1–20 under 35 U.S.C. § 103(a) as unpatentable over Michon and Joao is proper.

DECISION

The rejection of claims 1–20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED