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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PERRY L. JOHNSON

Appeal 2018-001348
Application 10/500,181¹
Technology Center 3600

Before ANTON W. FETTING, MICHAEL C. ASTORINO, and
NINA L. MEDLOCK, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ According to Appellant, the real party in interest is Perry L. Johnson Consulting (Appeal Br. 2).

STATEMENT OF THE CASE²

Perry L. Johnson (Appellant) seeks review under 35 U.S.C. § 134(a) of a final rejection of claim 17, the only claim pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellant invented a way of performing various types of audits to certify compliance with a national or international standard.
Specification 1:5–7.

An understanding of the invention can be derived from a reading of claim 17, which is reproduced below (bracketed matter and some paragraphing added).

17. A system for initiating a witness audit comprising: one or more computers configured to

[1] periodically receive input specifying a query to a central database storing information representing a plurality of available audits required to obtain or maintain an accreditation, each of the queries based on requirements of the witness audit including at least one of SIC code and accreditation type;

[2] for each of the queries, provide a list of the available audits responsive to the query;

[3] display one or more scheduled upcoming dates for a selected audit;

[4] receive input representing a confirmation of the one or more scheduled upcoming dates for the selected audit;

and

² Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.,” filed May 22, 2017) and Reply Brief (“Reply Br.,” filed November 21, 2017), and the Examiner’s Answer (“Ans.,” mailed September 21, 2017), and Final Action (“Final Act.,” mailed October 20, 2016).

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[5] store the confirmation in a corresponding field of the central database.

The Examiner relies upon the following prior art:

Schuler	US 5,855,005	Dec. 29, 1998
Boyd	US 2002/0194049 A1	Dec. 19, 2002

Claim 17 stands rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claim 17 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Schuler and Boyd.

ISSUES

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

The issues of obviousness turn primarily on whether patentable weight should be afforded the characterization of the audit limitation as being limited to a witness audit.

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 the Prior Art

Schuler

01. Schuler is directed to auditing systems used for monitoring the activities of a business entity. Schuler 1:6–7.
02. Schuler describes a computer-implemented system for auditing a total exposure of an entity, the total exposure forming the basis of a premium amount to be charged to the entity for an insurance

policy. A first means for receiving a plurality of exposure information records from a first source is provided. Each of the exposure information records from the first source corresponds to a location of the entity and a class code associated with the location of the entity. A database, coupled to the first means for receiving, is provided for storing the exposure records from the first source. Each of the exposure records from the first source is stored in the database as a data structure having an entity number field for storing a code that uniquely identifies the entity in the database, a location field for storing information representing a geographical location of the entity, a class code field for storing information representing a class code associated with the entity, and an amount field for storing an exposure amount associated with the geographical location and the class code stored in the location and class code fields, respectively, of the data structure. A totaling means is provided for determining a first total exposure amount associated with the entity from the exposure records from the first source. A second receiving means is provided for receiving a second total exposure amount associated with the entity from a second source that is different from the first source. A reconciliation means reconciles the first total amount by comparing the first total amount to the second total amount. The reconciliation means includes means for entering into the system an explanation of a deviation between the first total amount and the second total amount. Schuler 1:66–2:28.

03. After an auditor has retrieved a listing or inventory of his or her audits using the Audit Inventory Menu as described above, the

auditor may next select an audit to work on by clicking on one of the individual audits listed by the Audit Inventory Menu.

Following the selection of an individual audit from the Audit Inventory Menu, a Policy View/ Audit View Menu is displayed for the auditor. From the Policy View/ Audit View Menu, the auditor may selectively proceed to one of several alternative steps by clicking on a particular box in the Menu. Schuler 5:53–6:24.

04. In addition to inputting the entity identification information, an auditor selects a model worksheet to use for auditing each entity. The auditor selects a model worksheet to use in auditing the entity by first clicking on a box, which causes a list of pre-formatted worksheets (or spreadsheets) to be displayed for the auditor, and then selecting one of the pre-formatted worksheets from the displayed list. Thus, each entity will have one or more selected worksheets that are associated with that entity. Information corresponding to the selected worksheet for a given entity is then stored in data records. Once a particular worksheet has been selected using a button, an auditor may access the worksheet in order to enter, reconcile and/or verify financial information associated with the entity by clicking on the button. Schuler 8:19–37.

Boyd

05. Boyd is directed to facilitating the arrangement of networking meetings between two or more individuals. Boyd para. 2.
06. Boyd describes the desirability of a personalized, dynamic interactive means which allows individuals to schedule a time and

place for a meeting for the purpose of business or personal networking. Boyd para. 17.

07. Boyd describes a participant either confirming or declining the meeting. Boyd paras. 48 and 59.

ANALYSIS

Claim 17 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more

STEP 1³

Claim 17, as a system 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.”

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

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Alice Corp. v CLS Bank Int'l, 573 U.S. 208, 217–18 (2014) (citations omitted) (citing *Mayo Collaborative Servs. v. Prometheus Labs., 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, 84 Fed. Reg. at 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

System claim 17 recites querying with a list, displaying dates, and receiving and storing a confirmation. Thus, claim 17 recites receiving, displaying, receiving, and storing data. None of the limitations recites 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 17 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 ineligible. As set forth in the Revised Guidance, which extracts and synthesizes key concepts identified by the courts, abstract ideas

include (1) mathematical concepts⁴, (2) certain methods of organizing human activity⁵, and (3) mental processes⁶. Among those certain methods of organizing human activity listed in the Revised Guidance are commercial or legal interactions. Like those concepts, claim 17 recites the concept of quality management. Specifically, claim 17 recites operations that would ordinarily take place in advising one to periodically receive data to select and confirm an audit date from a list of dates. The advice to periodically receive data to select and confirm an audit date from a list of dates involves auditing results, which is an economic act, and planning an audit, which is an act ordinarily performed in the stream of commerce. For example, claim 17 recites “provide a list of the available audits,” which is an activity that would take place whenever one is planning audits. Similarly, claim 17 recites “display one or more scheduled upcoming dates for a selected audit” and “confirmation of the one or more scheduled upcoming dates for the selected audit,” which are also characteristics of audit planning.

The Examiner determines the claims to be directed to confirming the date for an upcoming audit. Final Act. 2.

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); *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); *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); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

The preamble to claim 17 recites that it is a system for initiating a witness audit. The steps in claim 17 result in displaying and confirming an audit date, absent any technological mechanism other than a conventional computer for doing so.

As to the specific limitations, limitation 1 recites data gathering for the purpose of specifying a query. Limitation 2 recites data gathering in the form of providing a list for each query. There is no step between these of performing a query. Limitation 3 recites insignificant display of dates. Limitations 4 and 5 recite data gathering and storage in the form of receiving and storing a confirmation input, which is simply confirming a date. The limitations thus recite advice for periodically receiving data to select and confirm an audit date from a list of dates. To advocate periodically receiving data to select and confirm an audit date from a list of dates is conceptual advice for results desired and not technological operations.

The Specification at 1:5–7 describes the invention as relating to performing various types of audits to certify compliance with a national or international standard. The Specification at 3:12–23 describes this as being part of quality management. Thus, all this intrinsic evidence shows that claim 17 is directed to confirming an audit date, i.e. quality management. This is consistent with the Examiner's determination.

This, in turn, is an example of commercial or legal interactions as a certain method of organizing human activity because managing quality is an interaction of those managing quality in a commercial enterprise. The concept of quality management as advised to be done by periodically receiving data to select and confirm an audit date from a list of dates is part of the idea of managing quality with periodic audits. The steps recited in claim 17 are part of periodically assigning audit dates.

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Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. “We agree with the district court that filtering content is an abstract idea because it is a long-standing, well-known method of organizing human behavior, similar to concepts previously found to be abstract.” *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1347 (Fed. Cir. 2016).

Alternately, this is an example of concepts performed in the human mind as mental processes because the steps of receiving, displaying, receiving, and storing 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 Commc’ns 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 17, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data reception, display, and storage 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 abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 17 is directed to receiving, displaying, receiving, and storing data, and not a technological implementation or application of that idea.

From this we conclude that at least to this degree, claim 17 is directed to quality management by periodically receiving data to select and confirm an audit date from a list of dates.

STEP 2A Prong 2

The next issue is whether claim 17 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 i.e. 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).

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.”

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

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

“[T]he relevant question is whether the claim[] here do[es] more than simply instruct the practitioner to implement the abstract idea [] on a generic computer.” *Alice*, 573 U.S. at 225. It does 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 3 is insignificant post solution activity, such as storing, transmitting, or displaying the results. All purported inventive aspects reside in how the data are interpreted and the results desired, and not in how the process physically enforces such a data interpretation or in how the process technologically achieves those results.

Viewed as a whole, Appellant’s claim 17 simply recites the concept of quality management by periodically receiving data to select and confirm an audit date from a list of dates 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 does not recite any particular implementation.

Claim 17 does not, for example, purport to improve the functioning of the computer itself. Nor does it effect an improvement in any other technology or technical field. The 23+ pages of specification spell out different generic procedures⁸ and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the

⁸ The Specification does not describe exemplary equipment or even parameters for equipment, other than there being a database and screen. Spec. 23.

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concept of quality management by periodically receiving data to select and confirm an audit date from a list of dates under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, claim 17 at issue amounts to nothing significantly more than an instruction to apply quality management by periodically receiving data to select and confirm an audit date from a list of dates using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

None of the limitations reflects 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 17 is directed to achieving the result of quality management by advising one to periodically receive data to select and confirm an audit date from a list of dates as distinguished from a technological improvement for achieving or applying that result. This amounts to commercial or legal interactions, which fall within certain

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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 17 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, displaying, receiving, and storing data amounts to electronic data query and retrieval—one of the most basic functions of a computer. The limitation of “each of the queries based on requirements of the witness audit including at least one of SIC code and accreditation type” is not a step, but a recitation of the characterization of queries, *viz.* an aspiration as to how the queries are characterized, which is afforded no patentable weight. All of these computer functions are generic, routine, conventional computer activities that are performed only for their conventional uses. *See Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). *See 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 is used in some unconventional manner nor do any produce some unexpected result. Appellant does not contend to have 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

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particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am., Inc. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellant’s claim 17 add nothing that is not already present when the steps are considered separately. The sequence of data reception-display-reception-storage 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), *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 17 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

There are no other claims. There is only a single claim in the Application.

LEGAL CONCLUSION

From these determinations we further determine that claim 17 does 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 claim is directed to the judicial exception of the abstract idea of certain

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methods of organizing human activity as exemplified by quality management by advising one to periodically receive data to select and confirm an audit date from a list of dates, without significantly more.

APPELLANT’S ARGUMENTS

We are not persuaded by Appellant’s argument that “[i]mplementing an abstract idea, by definition, would mean that it is no longer abstract.” App. Br. 3. Claim 17 does not recite a technological implementation. “The features set forth in the claim[] are described and claimed generically rather than with the specificity necessary to show how those components provide a concrete solution to the problem addressed by the patent.” *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (2016).

We are not persuaded by Appellant’s argument “how does one, for example, perform with pen and paper queries to a central database-no less queries to a central database that are based on requirements of a witness audit including at least one of SIC code and accreditation type?” App. Br. 3. Recital of generic computer components to perform an abstract idea is generally insufficient.

Because the claims are directed to an abstract idea, the claims must include an “inventive concept” in order to be patent-eligible. No such inventive concept is present here. Instead, the claims “add” only generic computer components such as an “interface,” “network,” and “database.” These generic computer components do not satisfy the inventive concept requirement.

Mortgage Grader, Inc. v. First Choice Loan Services Inc., 811 F.3d 1314, 1324–1325 (2016) (internal citations and quotation marks omitted).

*Claim 17 rejected under 35 U.S.C. § 103(a) as unpatentable over Schuler
and Boyd*

Claim 17 is an apparatus claim with one recited part, viz. one or more computers. The claim does not recite any manner in which the word computer affects the structure or function of the parts.

As to structural inventions, such claims must be distinguished from the prior art in terms of structure rather than function. *See, e.g., In re Schreiber*, 128 F.3d 1473, 1477–78 (Fed. Cir. 1997). In order to satisfy the functional limitations in an apparatus claim, however, the prior art apparatus as disclosed must be capable of performing the claimed function. *Id.* at 1478. When the functional language is associated with programming or some other structure required to perform the function, that programming or structure must be present in order to meet the claim limitation. *Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1380 (Fed. Cir. 2011) (discussing *Microprocessor Enhancement Corp. v. Texas Instruments, Inc.*, 520 F.3d 1367 (Fed. Cir. 2008)). In some circumstances generic structural disclosures may be sufficient to meet the functional requirements. *See Ergo Licensing, LLC v. CareFusion 303, Inc.*, 673 F.3d 1361, 1364 (Fed. Cir. 2012) (citing *Telcordia Techs., Inc. v. Cisco Sys., Inc.*, 612 F.3d 1365, 1376–77 (Fed. Cir. 2010)).

Also, a structural invention is not distinguished by the work product it operates upon, such as data in a computer. “[E]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, “inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” *In re Otto*, 312 F.2d 937, 940 (CCPA 1963).

Claim 17 recites querying with a list, displaying dates, and receiving and storing a confirmation. As the Examiner finds, Schuler describes the query and date display, Boyd describes the confirmation, and the need and use of confirmations is and has been sufficiently notoriously well known to makes applying it to scheduling a date obvious on its face. The Examiner also finds that Schuler applies its queries to the audits as recited in the claim.

Appellant argues that the Examiner should have given patentable weight to the adjective “witness” in the limitations “witness audit.” We are not persuaded by Appellant’s argument that “the limitations at issue are positively recited within the context of the claim, and are entitled to be given patentable weight.” App. Br. 4. As we determined *supra*, a structural invention is not distinguished by the work product it operates upon, such as data in a computer. Furthermore, the characterization of the audit being a witness audit is discernable only in the mind of the beholder, and also undeserving of weight for that reason as well. *In re Bernhart*, 417 F.2d 1395, 1399 (CCPA 1969). Even if weight were granted, Appellant has not convincingly argued that because Schuler describes application of the claim steps to one form of audit, it would not have been obvious to one of ordinary skill to apply the claim steps in any other form of audit.

CONCLUSIONS OF LAW

The rejection of claim 17 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

The rejection of claim 17 under 35 U.S.C. § 103(a) as unpatentable over Schuler and Boyd is proper.

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DECISION

The rejection of claim 17 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