UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/916,022	06/12/2013	Charles E. Neagle III	PHAR-P0001US-CIP1	1510

134449 7590 03/26/2019

Grable Martin Fulton PLLC
2709 Dublin Road
Plano, TX 75094

EXAMINER
PAULSON, SHEETAL R.

ART UNIT	PAPER NUMBER
3626	

NOTIFICATION DATE	DELIVERY MODE
03/26/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@gchub.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHARLES E. NEAGLE III

Appeal 2018-001706
Application 13/916,022
Technology Center 3600

Before JOHN A. JEFFERY, DENISE M. POTHIER, and JUSTIN BUSCH, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Under 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1, 3, 4, 6–25, and 28–30, which constitute all the claims pending in this application.[2] We have jurisdiction under 35 U.S.C. § 6(b). Claims 2 and 5 were cancelled previously. Claims 26 and 27 are withdrawn from consideration.

We affirm.

---

[1] Appellant identifies the real party in interest as Pharmalto, LLC. App. Br. 1.

[2] Appellant cancelled claim 2 in a "Response to Final Office Action" (After Final Amend. 3) which was entered by the Examiner (Adv. Act. 1) after the Final Office Action.

CLAIMED SUBJECT MATTER

Appellant's invention relates to a "patient-centric" health and wellness mobile management system. Spec. ¶ 11. Appellant's Figure 1 is reproduced below:

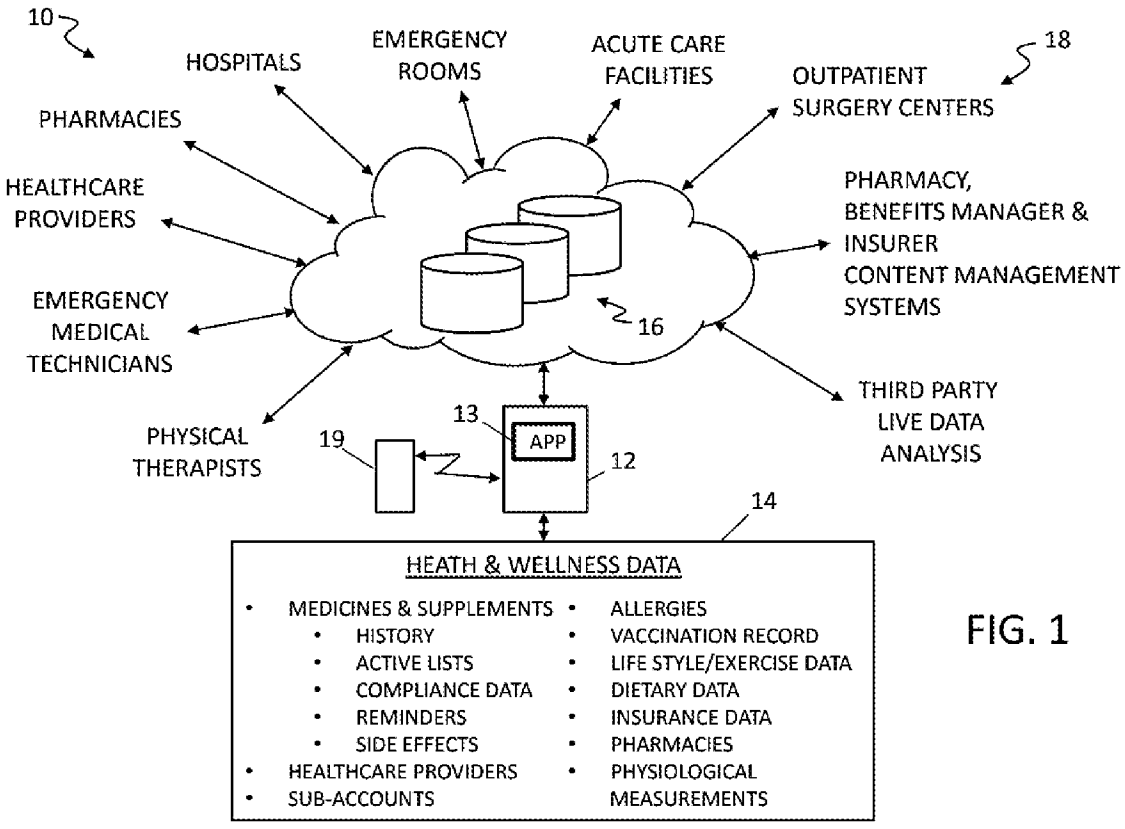

FIG. 1

Reproduction of Appellant's Figure 1.

Figure 1 illustrates a health and wellness mobile management system 10 accessible to a patient via a software application 13 executed on a computing device 12. *Id.* The patient may access a variety of health and wellness data 14. *Id.* ¶ 12. The health and wellness data may originate from a variety of sources 18. *Id.* ¶ 13.

Claim 1 is representative and reproduced below:

1. A health and wellness mobile management system independent of a healthcare entity and [solely] owned and controlled by a patient, comprising:

a database operable to store a health and wellness data record associated with a patient who is the sole owner of the data and has sole control over access authorization and storage of the data, the health and wellness data selected from the group consisting of medicines, supplements, medical history, compliance data, reminders, ineffective medicine, side effects, healthcare provider data, pharmacies, allergies, vaccination record, lifestyle data, exercise data, dietary data, legal documents, medical charts, laboratory data, imaging data, emergency contact data, and insurance data;

a data access control system adapted to strictly control access to the health and wellness data record stored in the database according to access rules and authorization [solely] set by the patient;

a web interface adapted to interface with information requesters submitting requests for entering and accessing data in the health and wellness data record via a web application executable by a computing device selected from the group consisting of mobile telephones, mobile gaming devices, tablet computers, laptop computers, and desktop computers, the information requesters submitting identification information and authorization solely granted by the patient;

the web interface further configured to receive the patient's self-reported data to update the data in the health and wellness data record;

an external connect interface adapted to interface electronically with external systems and applications associated with at least one of physical therapists, emergency medical technicians, healthcare providers, pharmacies, hospitals, emergency rooms, acute care facilities, laboratories, outpatient surgery centers, benefits manager and insurer content management systems, and third party live data analysis systems

for receiving health and wellness data associated with the patient for storing in the health and wellness data record in the database;

the external connect interface further configured to interface electronically with a personal health monitoring device for receiving additional health and wellness data associated with the patient for storing in the health and wellness data record in the database;

a prescription interface in communication with the database adapted to receive a pharmaceutical prescription for a prescribed medication for the patient submitted by a healthcare provider, verify the submitted pharmaceutical prescription against data in the patient's health and wellness data record, request and receive approval for the submitted pharmaceutical prescription, and monitor patient compliance including receiving the prescribed medication and following instructions in using the prescribed medication;

a patient identification device in the form of a wearable accessory adapted to automatically and uniquely identify the patient as the data owner of the health and wellness data record stored in the database, and to grant access to the data in response to detecting the patient identification device and verifying patient identification data automatically transmitted by the patient identification device, the patient identification device operable to automatically direct the web application to access at least a data subset of the health and wellness data record stored in the database upon recognition of access being granted; and

a physiological parameter measurement device adapted to wirelessly communicate with the external connect interface, the physiological parameter device operable to measure a physiological parameter of the patient, and transmit the measurement data via the external connect interface for storing in the health and wellness data record in the database.

REJECTION

Claims 1, 3, 4, 6–25, and 28–30 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Act. 3–8; Ans. 2.[3]

ANALYSIS

PRINCIPLES OF LAW

An invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 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." *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (brackets in original) (citing *Diamond v. Diehr,* 450 U.S. 175, 185 (1981)).

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. Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 217–18 (2014) (citing *Mayo*, 566 U.S. at 75–77). 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

[3] Although the Examiner includes cancelled claim 2 in the header of the rejection (Final Act. 3), we nonetheless omit that claim and present the correct claim listing here for clarity. Additionally, because claim 2 has been canceled, the rejection of claim 2 under 35 U.S.C. § 112 (Final Act. 2–3) is not before us.

in petitioners' application explain the basic concept of hedging, or protecting against risk.").

Concepts determined to be abstract ideas, and, thus, patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as "molding rubber products" (*Diehr*, 450 U.S. at 191); "tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores" (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252 (15 How.) 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that "[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula." *Diehr*, 450 U.S. at 187; *see also id.* at 192 ("We view respondents' claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula."). That said, the Supreme Court also indicated that a claim "seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment." *Id.* (citing *Benson* and *Flook*); *see, e.g.*, *id.* at 187 ("It is now commonplace that an *application* of a law of nature or mathematical formula

to a known structure or process may well be deserving of patent protection.").

If the claim is "directed to" an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where "we must examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 573 U.S. at 221 (quotation marks omitted). "A claim that recites an abstract idea must include 'additional features' to ensure 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].'" *Id.* (brackets in original) (quoting *Mayo*, 566 U.S. at 77). "[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention." *Id.*

In January 2019, the USPTO published revised guidance on the application of § 101. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Guidance"). Under the 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 activities such as a fundamental economic practice, or mental processes); and
>
> (2) additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING PROCEDURE (MPEP) §§ 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)).

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, and conventional in the field (*see* MPEP § 2106.05(d)); or

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

See 84 Fed. Reg. 50.

ALICE/MAYO STEP ONE

Independent claim 1 recites a health and wellness mobile management system by providing at least a database, a data access control system, a web interface, an external connect interface, a prescription interface, a patient identification device, and a physiological parameter measurement device. As claimed, the health and wellness mobile management system is independent of a healthcare entity and solely owned and controlled by a patient.

The database is operable to store a health and wellness data record associated with a patient. The patient is the sole owner of the data and has sole control over access and storage of the data. The data access control system is adapted to control access to the health and wellness data record according to rules and authorizations set by the patient.

The web interface is (1) adapted to interface with information requesters submitting requests for entering and accessing data in the health and wellness data record via a web application executable by a computing device, and (2) configured to receive the patient's self-reported data to update the health and wellness data record.

The external connect interface is (1) adapted to interface electronically with external systems and applications associated with a party for receiving health and wellness data associated with the patient for storing in the health and wellness data record in the database, and (2) configured to interface electronically with a personal health monitoring device for receiving additional health and wellness data associated with the patient for storing in the health and wellness data record in the database.

The prescription interface (1) communicates with the database and (2) is adapted to (a) receive a pharmaceutical prescription for a prescribed medication for the patient submitted by a healthcare provider, (b) verify the submitted pharmaceutical prescription against data in the patient's health and wellness data record, (c) request and receive approval for the submitted pharmaceutical prescription, and (d) monitor patient compliance including receiving the prescribed medication and following instructions in using the prescribed medication.

The patient identification device is (1) in the form of a wearable accessory, (2) adapted to (a) identify the patient as the data owner of the health and wellness data record stored in the database and (b) grant access to the data in response to (i) detecting the patient identification device and (ii) verifying patient identification data transmitted by the patient identification device, and (3) operable to direct the web application to access at least a data subset of the health and wellness data record stored in the database upon recognition of access being granted.

The physiological parameter measurement device is (1) adapted to wirelessly communicate with the external connect interface and (2) operable

to (a) measure a physiological parameter of the patient and (b) transmit the measurement data via the external connect interface for storing in the health and wellness data record in the database. App. Br. 25–26 (Claims App'x).

Step 1 of the Guidance

Under the Guidance, we must first determine whether the claims fall within the four statutory categories of patent subject matter identified by 35 U.S.C. § 101. *See* 84 Fed. Reg. at 53–54. Claim 1 recites a system and, thus, falls within the "machine" category of § 101.

Revised Step 2A, Prong 1 of the Guidance

Next, we must determine whether the claim is directed to a judicial exception, such as an abstract idea. *See Alice*, 573 U.S. at 218. To this end, we must determine whether the claim (1) recites a judicial exception and (2) fails to integrate the exception into a practical application. *See* 84 Fed. Reg. at 54–55. If both elements are satisfied, the claim is directed to a judicial exception under the first step of the *Alice/Mayo* test, which the Guidance refer to as Step 2A. *See id.*

In the rejection, the Examiner concludes the claims are directed to the abstract idea of "a patient controlled health and wellness record including categorization of patient record." Final Act. 3; Ans. 2. To determine whether a claim recites an abstract idea, we (1) identify the claim's specific limitations that recite an abstract idea and (2) determine whether the identified limitations fall within certain subject matter groupings, namely (a) mathematical concepts, (b) certain methods of organizing human activity, or (c) mental processes. *See* 84 Fed. Reg. at 52–54.

Mathematical concepts include mathematical relationships, mathematical formulas or equations, and mathematical calculations. *Id.* at 52. Certain methods of organizing human activity include fundamental economic principles or practices (including hedging, insurance, and mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing, or sales activities or behaviors; and business relations); and managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions). *Id.*

Mental processes are concepts performed in the human mind including an observation, evaluation, judgment, or opinion. *See id.* Unless the claim cannot practically be performed in the mind, the claim is in the mental process category if the claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation of generic computer components. *See id.* n.14.

The claimed database's functionality could be performed mentally apart from the recited database and storage in the database. Notably, a patient's mind could practically store a health and wellness data record associated with the patient, the health and wellness data selected from the group consisting of medicines, supplements, medical history, compliance data, reminders, ineffective medicine, side effects, healthcare provider data, pharmacies, allergies, vaccination record, lifestyle data, exercise data, dietary data, legal documents, medical charts, laboratory data, imaging data, emergency contact data, and insurance data as claimed. For example, the patient could merely *memorize* his or her own side effects of a medication.

The patient, by memorizing the side effects of the medication, could then be the sole owner of the data and have sole control over access authorization and storage of the data as claimed. In *HealthTrio, LLC v. Aetna, Inc.*, 2015 WL 5675303 (D. Colo. Sept. 28, 2015), *aff'd*, 673 F. App'x. 1006 (Mem) (Fed. Cir. 2017), the court determined, and our reviewing court affirmed, that claims directed to a "collection of data from various sources with the goal of compiling a single, comprehensive, patient health record" were no more than within the capacity of the human mind. The claimed database's functionality that collects data from the patient to compile into the single health and wellness data record is similar to the claims our reviewing court affirmed as being performed by the human mind. *See id.*

The claimed data access control system's functionality could be performed mentally apart from the recited data access control system. Notably, the patient's mind could also strictly control access to the health and wellness data record stored according to access rules and authorization solely set by the patient. For example, the patient could merely mentally determine the circumstances under which the patient is willing to share known allergies.

The claimed web interface's functionality could not only be mentally performed apart from the recitation of generic computer components, the functionality organizes human activity because it manages interactions between people. Notably, a healthcare provider may (mentally) determine whether she wants to request data from, or provide additional information to add to, the health and wellness data record. Communicating these determinations and the provider's identification information to the patient

merely outputs the result of those determinations and simply defines the personal interaction between the provider and patient. Furthermore, as discussed above, the patient solely granting authorization is simply a mental process the patient performs.

For example, a provider could merely *think* about his or her credentials, or recall such information. Using this information, the provider, for example, could provide her credentials to the patient and either ask for access to the patient's known allergies to a medication or provide additional information to the patient regarding medications that may cause allergic reactions. Such mental steps performed by the physician are similar to claims found abstract in *In re Meyer*, 688 F.2d 789 (CCPA 1982). In *Meyer*, our reviewing court held that a mental process a neurologist should follow when testing a patient for nervous system malfunctions is not patentable. *See id.* at 795–96; *Cf. SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App'x 950, 955 (Fed. Cir. 2014) (determining that comparing new and stored information and using rules to identify medical options are mental steps and no more than an abstract idea). Furthermore, collecting data from the physician to compile into the single health and wellness data record is similar to the claims our reviewing court affirmed as being performed by the human mind. *See HealthTrio,* 2015 WL 5675303.

The claimed web interface's additional functionality of receiving the patient's self-reported data to update the data in the health and wellness data record could be performed mentally apart from the recitation of generic computer components. *Cf. id.* For example, the patient could merely *memorize* any self-reported allergies.

The claimed external connect interface's functionality could not only be performed mentally apart from the recitation of generic computer components, the functionality also simply organizes human activity because it manages interactions between people. Notably, the patient could interact with providers to receive health and wellness data associated with the patient for storing in the health and wellness data record in the database. *Cf. id.* For example, a provider could merely determine a diagnosis or think about a treatment associated with the patient. The patient, then, receives and memorizes (i.e., stores) the diagnosis or treatment.

The claimed external connect interface's additional functionality for receiving additional health and wellness data associated with the patient for storing in the health and wellness data record could be performed mentally but for the recitation of generic computer components. *Cf. id.* For example, the patient could merely monitor various health conditions (shortness of breath, sore joints, etc.) and memorize those conditions, along with other health and wellness data that the patient remembers.

The claimed prescription interface's functionality organizes human activity because it manages interactions between people (e.g., following rules or instructions). Notably, the particular functions of the recited prescription interface are all functions that a patient and pharmacy perform in response to a doctor's prescribed medication to the patient. For example, if the patient is prescribed medication by the doctor, a pharmacy receives a patient's pharmaceutical prescription for a prescribed medication by a healthcare provider. The patient (1) verifies the submitted pharmaceutical prescription against the patient's knowledge of which medications the

patient already takes; (2) requests and receives approval for the submitted pharmaceutical prescription; and (3) monitors his or her own compliance including receiving the prescribed medication and following instructions in using the prescribed medication. These managed interactions fit squarely within the certain methods of human activity organization category of the agency's Guidance. *See* 84 Fed. Reg. at 52 (listing exemplary ineligible methods of organizing human activity).

The claimed patient identification device's functionality controls one's access to information and, therefore, also recites certain methods of organizing human activity, which is a category of abstract idea. *See* 84 Fed. Reg. at 52. In *Prism Technologies LLC v. T-Mobile USA, Inc.*, 696 Fed. App'x 1014, 1016 (Fed. Cir. 2017), our reviewing court also analyzed whether a system that controls access to protected computer resources by authenticating identity data was directed to non-statutory subject matter. In *Prism*, the Federal Circuit determined a system that receives identity data, authenticates the identity data, and permits access upon successfully authenticating the identity data was directed to an abstract idea of "providing restricted access to resources." *Id.* at 1016–17.

Like the claims in *Prism*, the patient identification device's recited functionality restricts access to resources. Notably, the particular functions of the recited patient identification device—(1) uniquely identifying the patient as the data owner of the health and wellness data record stored in the database and (2) granting access to the data in response to detecting the patient and verifying patient identification data automatically transmitted by the patient—are functions that organize human activity at least to the extent

that access is restricted to only some people (i.e., those who are authenticated and authorized), yet denied to others. Thus, the patient identification device's above-noted functionality controls one's access to information and, therefore, recites certain methods of organizing human activity, which is a category of abstract idea. *See* 84 Fed. Reg. at 52.

The claimed physiological parameter measurement device's functionality could be performed mentally but for the recitation of generic computer components. Notably, the patient could mentally measure a physiological parameter of the patient and remember the data (i.e., "transmit the measurement data . . . for storing in the health and wellness data record"). *Cf. HealthTrio,* 2015 WL 5675303. For example, the patient could merely determine her own measured heart rate over time and *memorize* the measured heart rate.

Claim 1 recites the concept of managing health and wellness information, which merely consists of activities that fall under the mental processes and certain methods of organizing human activity categories identified in the Guidance and thus, recites abstract ideas. *See* 84 Fed. Reg. at 52. More specifically, as explained above, the management of health records is merely the combination of observations, evaluations, judgments, and opinions (i.e., the mental process category of abstract idea) with defining business relations and managing relationships or interactions between people (i.e., the certain methods of organizing human activity category of abstract idea). *Id.*

Revised Step 2A, Prong 2 of the Guidance

Although the claim recites an abstract idea based on these mental processes and certain methods of organizing human activity, we must determine whether the abstract idea is integrated into a practical application, namely whether the claim applies, relies on, or uses the abstract idea in a manner that imposes a meaningful limit on the abstract idea, such that the claim is more than a drafting effort designed to monopolize the abstract idea. *See* 84 Fed. Reg. at 54–55. To do this, we evaluate the "additional elements individually and in combination to determine whether they integrate the exception into a practical application, using one or more of the considerations laid out by the Supreme Court and the Federal Circuit." *Id.* at 55.

Notably, the *additional* limitations recited in claim 1 are the "database," the "data access control system," the "web interface," the "web application executable by a computing device selected from the group consisting of mobile telephones, mobile gaming devices, tablet computers, laptop computers, and desktop computers," the "external connect interface," the "external systems and applications," the "interfac[ing] electronically," the "personal health monitoring device," the "prescription interface," the "patient identification device in the form of a wearable accessory adapted to automatically . . . identify the patient," the "patient identification device operable to automatically direct the web application to access at least a data subset of the health and wellness data record stored in the database upon recognition of access being granted," and the "wirelessly communicat[ing]." App. Br. 25–26 (Claims App'x). Thus, we evaluate the additional

limitations to determine whether they integrate the abstract idea into a practical application.

The courts have identified examples in which a judicial exception has not been integrated into a practical application. *See* 84 Fed. Reg. at 55. One such example is whether an additional element adds insignificant extra-solution activity to the judicial exception. *See id.* n.31 (citing MPEP § 2106.05(g) regarding insignificant extra-solution activity). "Purely 'conventional or obvious' 'post-solution activity' is normally not sufficient to transform an unpatentable law of nature into a patent-eligible application of such a law." *Mayo*, 566 U.S. at 79 (quoting *Flook*, 437 U.S. at 590).

The patent identification device's functionality—namely automatically accessing at least a data subset of a health and wellness data record stored in a database upon recognition of access being granted—constitutes insignificant extra-solution activity that is insufficient to integrate the abstract idea into a practical application. The automatically accessing the health and wellness data record does not alter the nature of the record, nor does it require unconventional techniques or hardware. *Cf. Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715–16 (Fed. Cir. 2014) (restricting public access to media was found to be insignificant extra-solution activity). Rather, this function simply outputs the data to which access is granted.

An improvement in the functioning of a computer, or an improvement to other technology or technical field can indicate that the additional elements integrate the exception into a practical application. *See* 84 Fed. Reg. at 55 (citing MPEP § 2106.05(a)). Appellant contends claim 1 effects

an improvement of security and access control of a health record database that is solely owned and controlled by a patient and independent of any healthcare entity. App. Br. 17. Appellant analogizes the claimed invention with *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016). App. Br. 15–16, 18–19; Reply Br. 2–8.

We disagree. In *Enfish*, the Federal Circuit explained that "[t]he Supreme Court has suggested that claims 'purport[ing] to improve the functioning of the computer itself,' or 'improv[ing] an existing technological process' might not succumb to the abstract idea exception." *Enfish*, 822 F.3d at 1335. Even assuming claim 1 is directed to an improvement to a health record database's security and access control, the improvement does not parallel any improvement to computer functionality itself, such as with *Enfish*'s "self-referential table for a computer database." *Id.* at 1336. *Enfish*'s self-referential table for a computer database is a specific type of data structure designed to improve the way a computer stores and retrieves data in memory. *Id.* at 1339. But, unlike the claimed invention in *Enfish* that improved how a computer stores and retrieves data in memory, the claimed invention here uses generic computing components. Appellant's characterization of the claimed database as being "patient-centric" (App. Br. 5, 18, 21; Reply Br. 7, 10; Spec. ¶ 11) does not overcome the fact the claimed database remains a generic computer database. Appellants' alleged improvement merely identifies the particular entity who is in control of access to data, which does not change any technological aspect of how the data is stored or accessed.

To the extent Appellant argues the claimed invention is eligible based on the holdings in *McRO, Inc. v. Bandai Namco Games America, Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (App. Br. 16; Reply Br. 8), this argument is unavailing. There, the claimed process used a combined order of specific rules that rendered information in a specific format that was applied to create a sequence of synchronized, animated characters. *McRO*, 837 F.3d at 1315. Notably, the recited process in *McRO* automatically animated characters using particular information and techniques—an improvement over manual three-dimensional animation techniques that was not directed to an abstract idea. *Id.* at 1316. Unlike *McRO*, the claimed invention here merely uses generic computing components that do not improve a display mechanism as was the case in *McRO*. *See SAP Am. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (distinguishing *McRO*).

Nor does Appellant identify anything in the claims that is directed to an improvement to a problem specifically arising in the realm of computer networks, such as *DDR Holdings*' overriding of routine and conventional sequence of events ordinarily triggered by clicking a hyperlink. *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (Fed. Cir. 2014). Nor does Appellant purport to improve the data access control system, the interfaces, web application executable by a computing device, the external systems and applications, the electronic interfacing, the personal health monitoring device, the patient identification device in the form of a wearable accessory, or the wireless communication. Notably, each of these limitations merely recite generic computer components or functions at a high level of generality. These generic components and functions do not change

how data is stored or accessed. Rather, the claims simply generically recite using the components or functions as tools to perform as intended, without claiming any improvement to the components or technological functions themselves. *See In re TLI Commc'ns LLC Patent Litig.,* 823 F.3d 607, 611 (Fed. Cir. 2016).

The Examiner finds, and we agree, that "Appellant fails to provide support within the specification regarding how the implementation of the specific invention improves a computer related technology." Ans. 8. Thus, here, as in *Alice*, the claims "do not . . . purport to improve the functioning of the computer itself or effect an improvement in any other technology or technical field." *Alice*, 573 U.S. at 225.

Accordingly, claim 1 does not integrate the judicial exception into a practical application.

ALICE/MAYO STEP TWO

Revised Step 2B of the Guidance

Because the claim does not integrate the judicial exception into a practical application, we determine whether additional elements of the claim, individually or in combination, provide an inventive concept. *See* Fed. Reg. at 56. To this end, we determine whether the additional elements (1) add a specific limitation or combination of limitations that is not well-understood, routine, and conventional activity in the field, which is indicative that an inventive concept may be present or (2) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present. *Id.*

Contrary to Appellant's contention (App. Br. 19), the mere fact that the Examiner has not presented a prior art rejection under §§ 102 or 103 does not overcome a § 101 rejection. "[P]atent-eligibility does not turn on ease of execution or obviousness of application. Those are questions that are examined under separate provisions of the Patent Act." *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1052 (Fed. Cir. 2016) (citing *Mayo*, 566 U.S. at 89–90); *see Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013) ("Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.").

The Examiner concludes under step two in the *Mayo/Alice* framework that the additional elements of claim 1, other than the abstract idea, amount to no more than a recitation of generic computer components performing functions that are well-understood, routine, and conventional activities previously known in the pertinent industry. Final Act. 6–7. According to the Examiner, viewed as a whole, these additional elements do not qualify as significantly more than the abstract idea. *Id.* at 7. Appellant does not persuasively argue that these elements operate in an unconventional manner. The claims recite the additional elements at a high level of generality and the disclosure describes the elements in generalities. *See, e.g.*, Spec. ¶¶ 11–13, 20–22, Figs. 1–2.

Thus, "the claims at issue amount to 'nothing significantly more' than an instruction to apply the abstract idea . . . using some unspecified, generic computer." *Alice*, 573 U.S. at 225–26 (citing *Mayo*, 566 U.S. at 71). Therefore, we are not persuaded that the Examiner erred in rejecting claim 1. Appellant presents shorter versions of substantially the same arguments for

claims 14 and 28. App. Br. 19–23. Thus, for the same reasons discussed above, we are not persuaded the Examiner erred in rejecting claims 14 and 28. Nor are we persuaded the Examiner erred in rejecting claims 3, 4, 6–13, 15–25, 29, and 30, not argued separately with particularity.

CONCLUSION

The Examiner did not err in rejecting claims 1, 3, 4, 6–25, and 28–30 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's decision to reject claims 1, 3, 4, 6–25, and 28–30.

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. § 41.50(f).

AFFIRMED