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Frisina, LLC
4600 Euclid Ave. Suite 420
Cleveland, OH 44103

EXAMINER	
LE, LINH GIANG	

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD CALES

Appeal 2018-002479
Application 14/921,850
Technology Center 3600

Before CARL W. WHITEHEAD JR., JASON V. MORGAN, and AMBER L. HAGY, *Administrative Patent Judges*.

HAGY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–19, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

The claims are directed to fully automated medical coding software. (Spec. 1:11.) By way of background, Appellant's Specification describes coding systems used by physicians to assign a "medical evaluation and management code to doctor-patient encounters so that the physician[s] may be compensated for [their] work." (*Id.* at 1:14–15.) Appellant's Specification notes that "computers have been used to partially automate the process of medical coding," but states that "[w]hat is missing in the art is a system that obviates the need for a medical coding professional to check a physician's inputs, or to assimilate data from incompatible external systems, and ensure that the correct medical evaluation and management code is assigned." (*Id.* at 1:26–27, 2:12–15.)

Exemplary Claim

Claim 1, the sole independent claim, is exemplary of the claimed subject matter, and is reproduced below with the disputed limitations italicized:

> 1. A co-operable set of computer programs for recording patient interactions, comprising a set of instructions, portions of which are executable on at least a mobile computing device, the co-operable set of computer programs being adapted to carry out the acts of:
>
> *detecting a clinical setting parameter, wherein the parameter value is set by an act of an examining physician comprising initializing one of a plurality of complementary clinical computer programs*;
>
> determining a first set of elemental clinical data fields corresponding to the clinical setting parameter that are potentially relevant to determination of a medical evaluation and management code characterizing a physician-patient interaction;

rendering an electronic clinical form containing known-relevant elemental clinical data fields requiring input by the examining physician;

displaying further elemental clinical data fields on the electronic form, or a separate electronic form, one or more of the further elemental clinical data fields being found relevant, based upon input by the examining physician, to determination of a medical evaluation and management code characterizing the physician-patient interaction;

eliminating elemental clinical data fields as irrelevant to determination of a medical evaluation and management code characterizing the physician-patient interaction based upon input by the examining physician;

recording pharmacy orders, lab orders, referrals, and/or any act of the examining physician relevant to determination of a medical evaluation and management code characterizing the physician-patient interaction;

and *assigning a medical evaluation and management code according to quantified risk, physical examination, and complexity of the physician-patient encounter*.

References

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Rosenfeld et al. ("Rosenfeld")	US 2005/0159987 A1	July 21, 2005
Reicher et al. ("Reicher")	US 2010/0138239 A1	June 3, 2010

Rejections[1]

Claims 1–19 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter ("computer program per se"). (Final Act. 3.)

[1] All rejections are under the provisions of Title 35 of the United States Code in effect after the effective date of the Leahy-Smith America Invents Act of 2011. (Final Act. 2.)

Claims 1–19 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter ("abstract idea"). (Final Act. 3–8.)

Claims 1–11, 15, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Reicher and Rosenfeld. (Final Act. 8–14.)

Issues

(1) Whether the Examiner erred in rejecting claims 1–19 under 35 U.S.C. § 101 as failing to "fall within at least one of the four categories of patent eligible subject matter because the claims are directed to a computer program *per se*[,] which is not a process, machine, manufacture or composition of matter." (Final Act. 3 (emphasis omitted).)

(2) Whether the Examiner erred in rejecting claims 1–19 under 35 U.S.C. § 101 as being directed to a judicial exception to statutory subject matter ("abstract idea"), and thus, to patent-ineligible subject matter.

(3) Whether the Examiner erred in finding Reicher discloses "detecting a clinical setting parameter, wherein the parameter value is set by an act of an examining physician comprising initializing one of a plurality of complementary clinical computer programs," and "eliminating elemental clinical data fields as irrelevant to determination of a medical evaluation and management code characterizing the physician-patient interaction based upon input by the examining physician," as recited in independent claim 1.

(4) Whether the Examiner erred in finding the combination of Reicher and Rosenfeld teaches or suggests "assigning a medical evaluation and management code according to quantified risk, physical examination, and complexity of the physician-patient encounter," as recited in independent claim 1.

ANALYSIS

A. Section 101 Rejection—Computer Program Per Se (Claims 1–19)

The Examiner rejects claims 1–19 under 35 U.S.C. § 101, concluding "the claimed invention is directed to non-statutory subject matter." (Final Act. 3 (emphasis omitted).) In particular, the Examiner concludes "the claims are directed to a computer program *per se*," and thus, are not directed to one of the four statutory categories of patent eligible subject matter—namely, "a process, machine, manufacture[,] or composition of matter." (*Id.* (emphasis omitted).)

We agree. Although claim 1 references steps to be performed, it is directed to "a co-operable set of computer programs" for performing the method steps and not to the method itself. Therefore, claim 1 is not directed to a process. Claim 1 also recites the set of computer programs comprises instructions that, when executed by a "mobile computing device," carry out the recited steps, but does not positively recite the device or that the instructions are actually embodied in the device. Therefore, claim 1 is not directed to a machine. Claim 1 also does not recite any tangible, non-transitory or transitory, embodiment of the set of computer programs or instructions, and thus, would encompass such a program and instructions in the mind of a programmer. Therefore, claim 1 is not directed to an article of manufacture or composition of matter. In short, we agree with the Examiner's conclusion that claim 1 is directed to a "set of computer programs" i.e., software *per se*, and is, accordingly, not patent-eligible. Dependent claims 2–19 do not add any limitations that would cure this deficiency.

We, therefore, sustain the Examiner's rejection of claims 1–19 on this ground, which Appellant does not address on appeal.

B. Section 101 Rejection—Abstract Idea (Claims 1–19)

The Examiner also rejects claims 1–19 under § 101 as being directed to patent-ineligible subject matter—that is, to a "judicial exception" to statutory subject matter. (Final Act. 3–8.)

The Supreme Court has set forth an analytical "framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71–73 (2012)). In the first step of the analysis, we determine whether the claims at issue are "directed to" a judicial exception, such as an abstract idea. *Alice*, 134 S. Ct. at 2355. If not, the inquiry ends. *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1346 (Fed. Cir. 2017); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). If the claims are determined to be directed to an abstract idea, then we consider under step two whether the claims contain an "inventive concept" sufficient to "transform the nature of the claim into a patent-eligible application." *Alice*, 134 S. Ct. at 2355 (quotations and citation omitted).

Noting that the two stages involve "overlapping scrutiny of the content of the claims," the Federal Circuit has described "the first-stage inquiry" as "looking at the 'focus' of the claims, their 'character as a whole,'" and "the second-stage inquiry (where reached)" as "looking more precisely at what the claim elements add—specifically, whether, in the Supreme Court's terms, they identify an 'inventive concept' in the

application of the ineligible matter to which (by assumption at stage two) the claim is directed." *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). In considering whether a claim is directed to an abstract idea, we acknowledge, as did the Court in *Mayo*, that "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo*, 566 U.S. at 71. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that in itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish*, 822 F.3d at 1336.

Step One: Whether the Claims Are Directed to a Patent-Ineligible Concept (Abstract Idea)

Appellant first asserts the Examiner has not made out a "*prima facie* case for finding an abstract idea." (Br. 7.) We disagree. In rejecting the pending claims under § 101, the Examiner analyzed the claims using the *Mayo/Alice* two-step framework, consistent with the guidance set forth in the USPTO's "2014 Interim Guidance on Patent Subject Matter Eligibility," 79 Fed. Reg. 74618 (Dec. 16, 2014), in effect at the time the Final Office Action was mailed. Specifically, the Examiner notified Appellant that claims 1–19 are directed to the "abstract idea" of "[d]etermining relevant and irrelevant data fields pertaining to a medical evaluation and assigning accurate medical evaluation and management codes describing a physician-patient encounter based upon the received data." (Final Act. 4 (emphasis omitted).) The Examiner provided reasoning to support this conclusion, stating that the claimed subject matter is directed to an abstract idea because "it compares new and stored information and uses rules to identify options"

(*id.* at 5 (citing *Smartgene*)[2] (emphasis omitted)) and also because it "organiz[es] information through mathematical correlations" (*id.* (citing *Digitech*)[3].) In so doing, the Examiner notified Appellant of the reasons for the rejection "together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application." 35 U.S.C. § 132. We find, therefore, that the Examiner set forth a prima facie case of patent-ineligibility.

Appellant argues the Examiner's rejection ignores elements of the claims, and asserts the claimed invention is not abstract because it recites steps that "[c]ollectively . . . claim a specific and concrete process for calculating an evaluation and management (E&M) code that is far more than any abstract idea that it may embody." (Br. 8.) Appellant argues that application of the abstract idea in the context of computer-automated technique removes the claims from the realm of being directed to an abstract idea. We disagree. As the Supreme Court has said, "'if a claim is directed essentially to a method of calculating, using a mathematical formula, even if the solution is for a specific purpose, the claimed method is nonstatutory.'" *Parker v. Flook*, 437 U.S. 584, 595 (1978) (quoting *In re Richman*, 563 F.2d 1026, 1030 (CCPA 1977)). In addition, the Supreme Court and the Federal Circuit have repeatedly made clear that "merely limiting the field of use of the abstract idea to a particular existing technological environment does not render the claims any less abstract." *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1259 (Fed. Cir. 2016).

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[2] *Smartgene, Inc. v. Adv. Biological Labs., S.A.*, 555 Fed. Appx. 950 (Fed. Cir. 2014).

[3] *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014).

Appellant further argues "the claimed invention represents a significant improvement over the prior art because it fuses electronic medical charting with medical E&M coding in such a way as to carry out both processes at once," which Appellant asserts "is unknown in the prior art." (Br. 8.) To the extent Appellant maintains that the claimed subject matter is not directed to an "abstract idea" because it is novel, Appellant misapprehends the law. As the Federal Circuit has explained, a "'claim for a *new* abstract idea is still an abstract idea.'" *SAP Am., Inc. v. Investpic, LLC*, No. 2017-2081, 2018 WL 2207254, at *1 (Fed. Cir. May 15, 2018) (*quoting Synopsis, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016)). Although we disagree with Appellant's assertion of the claims' novelty over the prior art (as discussed in the next section), even assuming the technique claimed was "'innovative, or even brilliant,'" that would not be enough for the claimed abstract idea to be patent eligible. *See SAP America*, 2018 WL 2207254 at *1.

As the Examiner concludes, and we agree, the claims here are ineligible because they recite nothing but a series of steps of data selection and gathering, manipulation of that data based on application of mathematical rules, and presentation of the results. (Final Act. 4–5; Ans. 3–4.) That is all abstract. *See SAP America*, 2018 WL 2207254 at *4; *Electric Power*, 830 F.3d at 1354. In characterizing the claimed subject matter as directed to an abstract idea, however, we do not discount Appellant's argument that the claimed invention may provide many benefits. (*See* Br. 8.) But such an argument is based only on the notion that the particular selection of data, and its analysis and presentation according to particular rules, are useful in the claimed context, which is not exclusive of patent-

ineligible subject matter. As many cases make clear, even if a process of collecting and analyzing information is "limited to particular content" or a particular "source," that limitation does not remove the collection and analysis from the realm of the abstract. *SAP America*, 2018 WL 2207254 at *4; *Electric Power*, 830 F.3d at 1353, 1355 (citing cases).

Also unpersuasive is Appellant's argument that the claimed invention "improv[es] the functioning of a computer" because it "makes efficient use of computing resources." (Br. 8.) The focus of the claims is not on any improved computer, but rather on the improved process of gathering and manipulating relevant data to "assign[] medical evaluation and management code[s]." Appellant's Specification makes clear that off-the-shelf computer technology (such as "a tablet computer or handheld device," without technological restriction) is usable to carry out the claimed process. (Spec. 6:6–8.) The claims, therefore, fit into the familiar class of claims that do not "focus . . . on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools." *Electric Power*, 830 F.3d at 1354. (*See also* Ans. 4–5: "[I]mproving the user experience of a physician interacting with a computer is not improving the functioning of the computing itself.")

In short, we have considered all of Appellant's arguments challenging the characterization of the pending claims as being directed to abstract ideas, but we do not find them to be persuasive of error. (Br. 7–9.) Rather, we agree with the Examiner, at step one of the *Alice* analysis, that the claims are directed to one or more abstract ideas. Accordingly, we turn to the second step of the *Alice* analysis, in which we determine whether the additional elements of the claims transform them into patent-eligible subject matter.

Step Two: Whether Additional Elements Transform the Idea into Patent-Eligible Subject Matter

Having found that the claims are directed to an abstract idea, the Examiner also finds that the additional elements or combinations of elements beyond the abstract idea do not amount to "significantly more" than the abstract idea itself, but instead amount to no more than a recitation of "[g]eneric computer structure . . . that serves to perform generic computer functions," and further finds the generic computer functions are "well-understood, routine, and conventional activities previously known to the pertinent industry." (Final Act. 5–6.)

Appellant's argument pertinent to step two appears to be only that "the claimed invention makes efficient use of computing resources, thereby improving the functioning of a computer." (Br. 8.) Appellant does not expressly challenge the Examiner's finding that the recited computer structure and functions are "well-understood, routine, and conventional." In essence, Appellant's argument distills down to the notion that automating the assignment of medical evaluation and management codes is patentable. As the Supreme Court has explained, however, "the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention." *Alice Corp.*, 134 S. Ct. at 2358. Thus, automating the assignment of medical evaluation and management codes using a computer (even based on the selection of particular data and analysis of that data according to particular rules) does not transform Appellant's claims into patent-eligible subject matter. (*See also* Ans. 4–5.)

Unlike the situation addressed in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), for example, Appellant does not claim to change how the underlying technology operates. Claim 1 calls for the

computer programs to be "*executable on* at least a mobile computing device" (emphasis added). As such, the claims recite only computer programs without positively reciting a mobile computing device (or any improvement to it) as noted above. In addition, as also noted above, the Specification describes only generic technology for executing the programs. (Spec. 6:5–8.) Moreover, the Examiner finds the tasks recited in claim 1—such as detecting parameters (gathering data), determining data fields (manipulating data and applying rules to data), rendering forms (generating user interfaces), and recording orders (storing data)—are common computer functions. (*See* Final Act. 6.) Appellant does not challenge this finding. Thus, we agree with the Examiner's finding that the solution here is rooted in routine use of conventional computer technology to carry out the claimed abstract idea. (*See id.* at 6–7; *see also* Ans. 4–5.)

In that regard, we note that there is a fundamental difference between computer functionality improvements, on the one hand, and uses of existing computers as tools to perform a particular task, on the other. Indeed, the Federal Circuit applied this distinction in *Enfish* in rejecting a § 101 challenge because the claims at issue focused on a specific type of data structure, i.e., a self-referential table for a computer database, designed to improve the way a computer carries out its basic functions of storing and retrieving data, and not merely on asserted advances in uses to which existing computer capabilities could be put. *Enfish*, 822 F.3d at 1335–36.

We find no parallel here between the claims before us and the claims in *Enfish* nor any comparable aspect in the claims before us that represents "an improvement to computer functionality," i.e., an improvement in the way a computer carries out its basic functions. *Id.* The alleged advantages

that Appellant touts do not concern an improvement to computer capabilities, but instead relate to an alleged improvement in selecting, gathering, and manipulating data to assign medical evaluation and management codes, for which a computer is used as a tool in its ordinary capacity—that is, providing processing technology to execute computer programs that, in turn, receive and manipulate the selected data. (*See also* Ans. 4–5.)

For the foregoing reasons, we are not persuaded the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter, or in rejecting on the same basis dependent claims 2–19, which Appellant does not argue separately. (Br. 7.)

C. Section 103(a) Rejection (Claims 1–11, 15, and 16)

We have reviewed the Examiner's rejection under 35 U.S.C. § 103(a) in light of Appellant's arguments the Examiner has erred. We disagree with Appellant's conclusions and we adopt as our own the findings and reasons set forth by the Examiner in the Final Action from which this appeal is taken and as further elaborated in the Examiner's Answer in response to Appellant's Appeal Brief. We concur with the conclusions reached by the Examiner, and we highlight the following points for emphasis.

Claim 1, the sole independent claim, is deemed representative, as Appellant does not argue any other claims separately. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2016). The Examiner finds Reicher teaches the limitations of claim 1 (Final Act. 8–10), except the Examiner finds "Reicher does not expressly teach assigning a medical evaluation and management code according to quantified risk, physical examination, and complexity of

the physician-patient encounter," for which the Examiner relies on Reicher in combination with Rosenfeld (*id.* at 10–11 (emphasis omitted)).

Appellant argues the Examiner's findings regarding Reicher are in error because "Reicher fails to teach the step of 'detecting a clinical setting parameter.'" (Br. 9 (emphasis omitted).) In particular, Appellant asserts "[w]ith particular regard to 'clinical setting', this term has a very specific meaning in the present application that is distinct from that of the cited art. More specifically, a clinical setting, or clinical setting form, is a superset of a clinical matter, or clinical matter form." (*Id.* at 9–10.) Appellant further asserts:

> The function of a clinical setting form is to make a first gross reduction of data fields that are irrelevant to assigning a medical E&M code. This first approximation is refined as the physician continues to interact with the program by, for instance, selecting a particular clinical matter form, and still further by supplying input to the clinical matter form. Importantly, a physician is not expected to respond to every field of a clinical setting form, because its purpose is to provide for selection of particular clinical matter forms.

(*Id.* at 10.)

We are not persuaded of error. First, we disagree with Appellant's assertion that Appellant's Specification has provided "a very specific meaning in the present application" of the claim term "clinical setting parameter." Inventors may act as their own lexicographers, but any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998); *see also Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1381 (Fed. Cir. 2008)

("A patentee may act as its own lexicographer and assign to a term a unique definition that is different from its ordinary and customary meaning; however, a patentee must clearly express that intent in the written description."). Absent an express intent to impart a novel meaning to a claim term, the words take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003) (citation omitted).

As the Examiner finds, and we agree, Appellant's Specification does not provide any explicit definition of the term "clinical setting parameter." (*See* Ans. 5–6 (emphasis omitted).) At most, in the portion of the Specification cited by Appellant, the term "clinical *matter*" is used in connection with describing *types of examinations*, such as "behavioral health exam; an eye, ear, nose and throat exam; or a neurologic exam." (Spec. 7:18–20 (emphasis added).) Appellant's Specification also uses the term "clinical *setting*" in describing *the setting in which an examination is to take place*—such as "an outpatient, emergency, inpatient, long-term care, nursing facility, or home healthcare setting." (*Id.* at 23:25–27 (emphasis added).) Broadly but reasonably construed in light of Appellant's Specification, the term "clinical setting" refers to the setting or location in which an examination is taking place (such as outpatient or emergency), and the term "clinical matter" refers to the type of examination (such as "behavioral health" or "neurological").

We are not persuaded the Examiner erred in finding claim 1, broadly but reasonably construed consistent with Appellant's Specification, encompasses the teachings of Reicher with regard to the disputed limitations

argued by Appellant: "detecting a clinical setting parameter" and "eliminating elemental clinical data fields as irrelevant to determination of a medical [code] based upon input by the examining physician." (*See* Br. 10.) In essence, Appellant asserts that that the claimed features are different because they are described in *different terms*, which is not persuasive of Examiner error. *See In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990) (explaining that the comparison of references to the claimed invention "is not an 'ipsissimis verbis' test"). Although Reicher does not use the specific language recited in the claim (e.g., "clinical setting parameter"), the Examiner finds, and we agree, Reicher discloses the substance of the limitations. In particular, the Examiner finds Reicher discloses the choice of a medical examination form is dependent "upon different parameters including scanner used for an imaging scan and referring physician attributes . . . ." (Final Act. 9 (citing Reicher ¶¶ 26, 39).) We agree. Reicher discloses:

> The choice of which medical examination form to use for a particular situation may be manual *or automatic* and may be *based on many different parameters*. For a particular medical examination, there may be none, one, or more than one examination forms created. The choice of a medical examination form may be based on one or more of medical imaging modality, *examination type*, clinical history of the patient, demographic information about the patient, prior examinations, *facility at which an exam is conducted*, the type of scanner used for an imaging scan, the type of insurance a patient holds, the location of the patient, whether the patient inpatient or outpatient, indications for the examination, referring physician, referring physician attributes (such as specialty) and/or the requested reading physician (or reading physician attributes).

(Reicher ¶ 26 (emphases added).) Reicher further discloses "[i]n some

embodiments, how a medical examination form 170 appears to a user may be *predefined* based on a series of rules that takes into account *various attributes* of the user, patient, *exam*, modality, *location*, etc." (*Id.* ¶ 41 (emphases added).)

Thus, Reicher teaches the disputed claim limitations by disclosing automatically and dynamically creating examination forms based on the "location" of the examination (which, consistent with the Specification, is within the scope of the claimed "clinical setting"), as well as the type of examination being performed (which, consistent with the Specification, is within the scope of the claimed "clinical matter").

Appellant also argues the Examiner's rejection is in error because "[t]he combination of Reicher and Rosenfeld fails to teach or suggest a computer program that uses physician examination inputs to generate a medical evaluation and management code." (Br. 10 (emphasis omitted).) In particular, Appellant asserts "[w]hile the cited art may disclose methods for generating and using medical examination forms, and determining medical codes, it does not teach or suggest methodology for fusing medical examination charting and coding into a single unified process." (*Id.*)

We are not persuaded of Examiner error. Appellant's argument does not address the Examiner's findings based on the combined teachings of Reicher and Rosenfeld, which we agree are supported by the cited teachings. (*See* Final Act. 10–11.) Rather, Appellant's argument amounts to merely characterizing Appellant's invention as a "very significant advancement," followed by the conclusory statement that "the cited art lacks a unified process as claimed by the Applicant . . . ." (Br. 10.) Such conclusory attorney assertions have little or no value in identifying the Examiner's

alleged error, and, consequently, have little persuasive value. *See* 37 C.F.R. § 41.37(c)(iv) (2016) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011).

For the foregoing reasons, we are not persuaded of error in the Examiner's 35 U.S.C. § 103(a) rejection of independent claim 1, or of dependent claims 2–11, 15, and 16, which are argued collectively with claim 1. (Br. 9.) We, therefore, sustain the rejection of claims 1–11, 15, and 16 on this ground.

DECISION

The Examiner's 35 U.S.C. § 101 rejections of claims 1–19 are affirmed.

The Examiner's 35 U.S.C. § 103(a) rejection of claims 1–11, 15, and 16 is affirmed.

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

AFFIRMED