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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD ALLEN ROBBINS, JUSTIN MARK BROCKIE,
JAMES MICHAEL KELLY, ASIF ALI,
MOJAHEDUL HOQUE ABUL HASANAT, OMAR FARUQ,
SAZZAD RAFIQUE, TAHSEEN MOHAMMAD,
UMMY HABIBA, SURAIYA PARVEEN, and
JEREMY IAN SCHULMAN ROBBINS

Appeal 2018-002934¹
Application 13/675,440
Technology Center3600

Before JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 2–4, 6–11, 101, and 103–106. We have jurisdiction under 35 U.S.C. § 6(b). A hearing was held November 13, 2019.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Therap Services, LLC as the real party in interest. (Appeal Br. 6.)

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant states the invention “relates to methods and system for acquiring and processing information collected from individuals having intellectual or cognitive disabilities, and for providing treatment, proof-of-service, and prevention of abuse and neglect based on that information.” (Spec. 1:14–17.)

Claim 106, reproduced below, is representative of the subject matter on appeal.

106. A system for recording visual information in an electronic format relating to at least two individuals, at least one of whom is an individual under care, from a video camera, regarding one or more goals of the individual under care, and restricting access of a user to said information, comprising:

- a computer system having a memory and a processor;

- a video camera for recording information pertaining to physical attributes of the individuals, wherein at least a portion of said information pertains to an initial inquiry relating to one or more goals of the individual under care;

- a transmission link for sending at least a portion of said recorded information to said computer system;

- a computer program stored in said memory and adapted to run on said processor, configured to:

 - store at least a portion of said transmitted information;

 - store at least one authorization profile associated with the user, wherein the user is associated with one or more roles and one or more caseloads and the caseloads include access privilege information for the individual under care;

 - determine whether the user is permitted to view said information pertaining to a caseload of the individual under care wherein the determination is based on said authorization profile

and the one or more caseloads and the one or more roles associated with the user;

blur a portion of said stored information pertaining to the one or more individuals other than the individual under care; and transmit at least a portion of said stored information pertaining to the individual under care, and said blurred portion of said stored information pertaining to the one or more individuals other than the individual under care, to said caseload of said individual under care for viewing by said user authorized to view said information.

THE REJECTION

The following rejection is before us for review.

Claims 2–4, 6–11, 101, and 103–106 are rejected under 35 U.S.C. § 101.

FINDINGS OF FACT

We adopt the Examiner’s findings as set forth on pages 2–7 in the Final Office Action² and on pages 5–11 in the Examiner’s Answer.

ANALYSIS

35 U.S.C. § 101 REJECTION

We will affirm the rejection of claims 2–4, 6–11, 101, and 103–106 under 35 U.S.C. § 101.

The Appellant argues claim 106 as the representative claim for the group 2–4, 6–11, 101, and 103–104, 106 (Appeal Br. 32–52), and so the

² All references to the Final Office Action refer to the Final Office Action mailed on March 24, 2017.

remaining claims of this group stand or fall with claim 106. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2016).

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. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

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

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India

rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); 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 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, 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.* (alterations 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.*

The PTO recently 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 activity 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, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Guidance.

The U.S. Court of Appeals for the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology

or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See Enfish*, 822 F.3d at 1335–36.

In so doing, as indicated above, we apply a “directed to” two prong test: (1) evaluate whether the claim recites a judicial exception, and (2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] 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.” Guidance at 53; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

The Specification states:

A goal of human service agencies may be to have more person centered documentation. Having the responses of a person is a key component for person centered documentation. For individuals with intellectual or cognitive disabilities who are receiving supports from others, there is a challenge to make sure that their goals and opinions are properly represented. In many cases these individuals are receiving support from multiple agencies with multiple oversights and monitoring organizations. Even within one organization there are multiple shifts of people with different access to information.

Spec. 1:19–25.

This method allows for the situation where different staff members observe an individual doing the same action or responding in a certain way and each staff member might interpret that information and document it differently. Given that an individual might have a lifelong condition and staff members can be transitory and thus have limited information, there exists a problem with the information flow available to a staff member. Some staff members might have worked longer with an individual and interpret non-verbal responses differently. This means the same response by an individual may cause different reporting interpretations. The responses would be stored so there

is an ability to review responses as part of an audit or other look back.

Spec. 4:11–18.

Concerning independent claim 106, the preamble says it is “for recording visual information in an electronic format relating to at least two individuals, at least one of whom is an individual under care, from a video camera, regarding one or more goals of the individual under care, and restricting access of a user to said information.”

Independent claim 106 recites in pertinent part the abstract items of:

...information pertaining to physical attributes of the individuals, wherein at least a portion of said information pertains to an initial inquiry relating to one or more goals of the individual under care; . . . sending at least a portion of said recorded information . . . ;

store at least a portion of said ... information;

store at least one authorization profile associated with the user, wherein the user is associated with one or more roles and one or more caseloads and the caseloads include access privilege information for the individual under care;

determine whether the user is permitted to view said information pertaining to a caseload of the individual under care wherein the determination is based on said authorization profile and the one or more caseloads and the one or more roles associated with the user;

blur a portion of said stored information pertaining to the one or more individuals other than the individual under care; and

transmit at least a portion of said stored information pertaining to the individual under care, and said blurred portion of said stored information pertaining to the one or more individuals other than the individual under care, to said caseload of said individual under care for viewing by said user authorized to view said information.

Accordingly, the Examiner found that claim 106 recites, “using categories to organize, store, and transmit information, etc.; collecting and

comparing known information; obtaining and comparing intangible data; comparing new and stored information and using rules to identify options; comparing data to determine a risk level; and/or organizing information through mathematical correlations.” (Final Act. 2.)

We find similarly that claim 106 recites a mental process of redacting confidential information based on privilege rules whereby only those parties with authorization are permitted access to the information. This is because claim 106 recites in pertinent part the claim limitations: store at least one authorization profile associated with the user, wherein the user is associated with one or more roles and one or more caseloads and the caseloads include access privilege information for the individual under care; determine whether the user is permitted to view said information pertaining to a caseload of the individual under care wherein the determination is based on said authorization profile and the one or more caseloads and the one or more roles associated with the user; blur a portion of said stored information pertaining to the one or more individuals other than the individual under care; and transmit at least a portion of said stored information pertaining to the individual under care, and said blurred portion of said stored information pertaining to the one or more individuals other than the individual under care. Thus, all this intrinsic evidence shows that claim 106 is directed to a mental process. This is consistent with the Examiner’s determination.

Moreover, these are concepts performed in the human mind as mental processes because the steps of receiving, transmitting, storing, and analyzing 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). Claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible-concept”).

Turning to the second prong of the “directed to” test, claim 106 only generically requires “a video camera,” “a computer system having a memory and a processor,” and “a transmission link.” These components are described in the Specification at a high level of generality. *See* Spec. 5:21–25, 6:1–17, Fig. 1. We fail to see how the generic recitations of these most basic computer components and/or of a system so integrates the judicial exception as to “impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53. We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in independent claim 106 invoke any assertedly inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”). Claim 106 does not improve another technology, because neither storing an authorization profile

nor blurring a portion of information, as recited in the claims, involves improving a technology. Guidance, 84 Fed. Reg. at 55; *see also* MPEP § 2106.05(a). Because no more than a generic computer is required, the claim also does not define, or rely on, a “particular machine.” MPEP § 2106.05(b).

Thus, we find that the claims recite the judicial exception of a mental process that is not integrated into a practical application.

That the claims do not preempt all forms of the abstraction or may be limited to redacted information does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“And that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to abstract ideas/judicial exceptions, the claims must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73).

Concerning this step the Examiner found the following:

the claims, individually, as a whole and in combination with one another, do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements or combination of elements in the claims, other than the abstract idea *per se*, amount to no more than a recitation of (A) a generic computer structure(s) that serves to perform generic computer functions that serve to merely link the abstract idea to a particular technological environment (i.e.,

computers); and/or (B) functions that are well-understood, routine, and conventional activities previously known to the pertinent industry. For example, claims 2-4, 6-11, 101 and 103-106 merely recite a computer system which is a well-known general purpose computer that receives data, stores data, transmits data, blurs data, etc. which are well-understood, routine and conventional activities.

(Final Act. 3.) We agree with the Examiner. “[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of process is purely conventional. Using a computer to record, transmit, store, determine, and apply decision criteria to data and modify the data as a result amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp.*, 830 F.3d at 1354; *see also In re Katz Interactive Call Processing Patent Litig.*, 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”). In short, each step does no more than require a generic computer to perform generic computer functions. The claims do not, for example, purport to improve the functioning of the computer itself. In addition, as we stated above, the claims do not affect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps

such conventional processing would entail based on the concept of information access under different scenarios (*see, e.g.*, Spec. 5:21-25, 6:1–17, 10:22–15:8, Fig. 1). Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract idea 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.

Considered as an ordered combination, the computer components of Appellant’s claims add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (record, transmit, store, determine, and apply decision criteria to data and modify the data as a result) and store is equally generic and conventional or otherwise held to be abstract. *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) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

We have reviewed all the arguments Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. (Appeal Br. 18–53, Reply Br. 3–19) We find that our analysis above substantially covers the substance of all the arguments,

which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellant argues: “the Examiner merely lists types of abstract ideas identified in various USPTO guidance materials, and contends that claim 106 is somehow directed to an abstract idea of one of these types.” (Appeal Br. 30.)

We disagree with Appellant because the Examiner’s “directed to finding” explicitly sets forth the characteristics of a mental process and/or mathematical concepts, e.g., “using categories to organize, store, and transmit information, etc. . . . and/or organizing information through mathematical correlations.” (Final Act. 2.)

Appellant next argues,

[t]he Examiner’s rejection fails to establish a *prima facie* case that the pending claims are directed to an abstract idea. The Examiner’s rejection also fails to establish a *prima facie* case that the pending claims do not amount to significantly more than an abstract idea itself.

....

The Examiner does not set forth where in the claims these recitations are found. In fact, the portions of the Office Action cited above amounts to the only explanation provided by the Examiner as to the relationship between the claims and the alleged abstract idea. No identification of the particular abstract idea has been provided, let alone the required explanation as to how an abstract idea is recited by the specific features of claim 106 or why the abstract idea is considered an abstract idea in the first place.

(Appeal Br. 29–31.)

We disagree with Appellant. The Examiner did provide sufficient

evidentiary support for the *Alice* “step two–A” determination in this case.

See (Final Act. 2–3) That is, the Examiner found that:

the claims are similar to COLLECTING INFORMATION, ANALYZING IT, AND DISPLAYING CERTAIN RESULTS OF THE COLLECTION AND ANALYSIS; USING CATEGORIES TO ORGANIZE, STORE AND TRANSMIT INFORMATION; and COMPARING NEW AND STORED INFORMATION AND USING RULES TO IDENTIFY OPTIONS, as identified in the *Electric Power Group, Cyberfone* and court decisions, because the claims define collecting information on individuals and user profiles....

(Final Act. 2–3, Ans. 3.)

The Examiner’s characterization of claim 106 is, in our view, fully consistent with the Specification, including the claim language as set forth above as intrinsic evidence. That the Examiner articulates the abstract idea at a higher level of abstraction than would Appellant is an insufficient basis to persuasively argue that the claim language has been mischaracterized or that the Examiner has failed to consider the claim as a whole. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016) (“An abstract idea can generally be described at different levels of abstraction.”)

To the extent Appellant argues that the Examiner erred in adequately supporting this determination by not providing evidence, we are unpersuaded. In this regard, there is no requirement that Examiners must provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. *See, e.g.*, MPEP § 2106.07(a)(III) (“The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be a question of law. Thus, the court does not require ‘evidence’ that a claimed concept is a judicial exception, and generally decides the legal

conclusion of eligibility without resolving any factual issues.” (Citations omitted).)

All that is required of the USPTO to meet its *prima facie* burden of production is that the Examiner set forth the statutory basis of the rejection and the reference or references relied upon in a sufficiently articulate and informative manner as to meet the notice requirement of 35 U.S.C. § 132. As the statute itself instructs, the Examiner must “notify the applicant,” “stating the reasons for such rejection,” “together with such information and references as may be useful in judging the propriety of continuing the prosecution of his application.” 35 U.S.C. § 132; *see also In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011) (declining “to impose a heightened burden on examiners beyond the notice requirement of § 132”). Here, as we found above, the Examiner has made these findings as required by the statute. (*See* Final Act. 2–4.) Thus, we find that a *prima facie* case was established by the Examiner.

On pages 31–33 of the Appeal Brief, Appellant parses various characteristics of a mental process listed by the Examiner from case law (Final Act. 3), but not mapped to claim recitations in the rejection. We are unpersuaded of error because on page 2 carrying to page 3 of the Final Office Action, the Examiner does identify the limitations of claim 106, albeit as a group, that are tied to the mental process characteristics enumerated by the Examiner.

Although we agree with Appellant that the claims must be read, as a whole (Appeal Br. 34–35), we nevertheless find, on balance, that claim 106 is directed to a mental process of redacting confidential information based on privilege rules whereby only those parties with authorization are

permitted to view the information. As found *supra*, claim 106 only includes the following generically recited device limitations: “video camera,” “a computer system having a memory and a processor,” and “a transmission link.” What remains in the claim after disregarding these device limitations, are abstractions, i.e.,

... user is associated with one or more roles and one or more caseloads and the caseloads include access privilege information for the individual under care;

determine whether the user is permitted to view [] information pertaining to a caseload of the individual under care wherein the determination is based on said authorization profile and the one or more caseloads and the one or more roles associated with the user;

blur a portion of said stored information pertaining to the one or more individuals other than the individual under care; and

transmit at least a portion of said stored information pertaining to the individual under care, and said blurred portion of said stored information pertaining to the one or more individuals other than the individual under care, to said caseload of said individual under care for viewing by said user authorized to view said information.

“[A] claim for a *new* abstract idea is still an abstract idea.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (citing *Mayo*, 566 U.S. at 90).

Appellant next argues, the claims “recite[] limitations that advance the prior art (as admitted by the Examiner) and includes ‘benefits’ that represent an improvement in the way video healthcare information is processed that was heretofore unknown.” (Appeal Br. 38.)

Although the claims purport to improve the way video healthcare information is processed, our reviewing court has held that speed and

accuracy increases stemming from the ordinary capabilities of a general purpose computer “do[] not materially alter the patent eligibility of the claimed subject matter.” *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012).

Appellant states that the claimed “caseloads” is defined in U.S. Patent 8,281,370 B2 as: “Caseloads specify which individuals and which programs the user is allowed to access information about. The actions a user is allowed to perform on that information in an embodiment of the system is specified by security access rules, or just rules.” (Tr. 6:9–12, *see also* Appeal Br. 42–43.) Citing to the Declaration of Richard A. Robbins, Appellant asserts that the claimed caseloads are “non-conventional.” (Appeal Br. 43–45.)

We disagree with Appellant. First, based on the definition offered by Appellant for the term “caseloads,” we find that this term by its definition is in fact an abstract idea. Authorization is information which is intangible. *See Elec. Power Grp.*, 830 F.3d at 1353 (citing *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 451 n.12 (2007)). Second, we are not persuaded by Appellant’s reference to the Robbins Declaration statement that “blurring video healthcare data to allow users (such as healthcare providers) to view the data associated with an individual under care, but not the video data associated with others, was not known in the electronic healthcare industry.” (Appeal Br. 45.) This is because “‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diehr*, 450 U.S. at 188–89. Simply because the declarant concludes “[b]lurring video healthcare data was not a

well understood, routine, conventional activity previously known to the electronic healthcare record industry” (Appeal Br. 45), is not sufficient evidence as to why such is not a well understood, routine, conventional activity. The statement is itself conclusory. Moreover, the claim does not recite how this blurring is accomplished. It only recites the idea of blurring by any and all means.

Citing to *BASCOM Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016) (Appeal Br. 46), Appellant asserts, “the reasoning of *BASCOM* supports the patent-eligibility of claim 106.” (*Id.*) We fail again to see how the instant claims are similar to those in *BASCOM*. There, an intermediary is inserted between two otherwise conventional computer nodes to move the location where a process is otherwise ordinarily executed. In *BASCOM*, it was the location of the filtering element, whereas in the instant claims there is no such specific location or ordered combination of elements.

Appellant attempts to distinguish *Electric Power Group and Cyberfone Sys., LLC v. CNN Interactive Group, Inc.*, 558 Fed.Appx. 988, 991 (Fed. Cir. 2014) by arguing that Appellant’s claimed filtering is distinguishable. (Appeal Br. 49–51.) But, it is long held that filtering is an abstract idea. *BASCOM*, 827 F.3d at 1348 (“filtering content is an abstract idea because it is a longstanding, well-known method of organizing human behavior, similar to concepts previously found to be abstract.”).

Claim 105

Appellant states, “[t]his claim contains the same allowable subject matter as independent claim 106. Thus, it is submitted that the incorporated arguments are equally applicable to these claims.” (Appeal Br. 53.)

Accordingly, we affirm the rejection of independent claim 105 for the same reasons set forth above for claim 106.

Appellant’s other arguments, including those directed to now-superseded USPTO guidance, have been considered but are not persuasive of error. (*See* 2019 Revised Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R–08.2017, of the MPEP (published Jan. 2018) should not be relied upon.”)).)

CONCLUSION

We conclude the Examiner did not err in rejecting claims 2–4, 6–11, 101, and 103–106 under 35 U.S.C. § 101.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
2–4, 6–11, 101, 103–106	101	Eligibility	2–4, 6–11, 101, 103–106	

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).

AFFIRMED