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PHILIPS INTELLECTUAL PROPERTY & STANDARDS 465 Columbus Avenue Suite 340 Valhalla, NY 10595			COLEMAN, CHARLES P.	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ERIC THELEN and FRANK WARTENA

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Appeal 2018-005794  
Application 14/482,544  
Technology Center 3600

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Before ALLEN R. MacDONALD, MICHAEL J. ENGLE, and  
IFTIKHAR AHMED, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–7 and 9–15, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Koninklijke Philips Electronics N.V. Appeal Br. 2.

## TECHNOLOGY

The claims relate to a healthcare system “adjusting a personalized care plan of a user.” Spec. 1:7–8. Claim 1 is illustrative and reproduced below:

1. A system for dynamically adjusting a care plan for a user, the care plan defining a plurality of prescribed care plan tasks to be adhered to by the user, the system comprising:

one or more processors configured by machine-readable instructions to:

measure a user’s adherence to an individual prescribed care plan task during a first period;

compare the user’s adherence to the individual prescribed care plan task to an expected adherence to the individual prescribed care plan task during the first period;

calculate the user’s compliance score indicating the user’s compliance to the individual prescribed care plan task based on the comparison of the user’s adherence and the expected adherence;

determine a compliance score threshold for the individual prescribed care plan task during the first period;

compare the user’s compliance score for the individual prescribed care plan task to the compliance score threshold for the individual prescribed care plan task during the first period; and

dynamically adjust the user’s care plan based on the comparison of the user’s compliance score and the compliance score threshold during the first period, wherein adjusting the user’s care plan includes:

dynamically adjusting the compliance score threshold for the individual prescribed care plan task based on the comparison of the user’s compliance score and the compliance score threshold during the first period such that the compliance score threshold changes from a first threshold value at a first time during the first period to a second threshold value at a second time during a second period subsequent to the first period.

REJECTION

Claims 1–7 and 9–15 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter without significantly more. Final Act. 3.

ANALYSIS

*Framework for § 101*

In 2019, the U.S. Patent & Trademark Office published revised guidance on the application of § 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”); USPTO, *October 2019 Update: Subject Matter Eligibility*, available at [https://www.uspto.gov/sites/default/files/documents/peg\\_oct\\_2019\\_update.pdf](https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf) (“Oct. Update”). Under that guidance, we look to the following steps to determine whether the claim recites the following items:

<b>USPTO Step</b>	<b>Does the claim recite ___?</b>	<b>MPEP §</b>
1	A process, machine, manufacture, or composition of matter	2106.03
2A, Prong 1	A judicial exception, such as a law of nature or any of the following groupings of abstract ideas: 1) Mathematical concepts, such as mathematical formulas; 2) Certain methods of organizing human activity, such as a fundamental economic practice; or 3) Mental processes, such as an observation or evaluation performed in the human mind.	2106.04
2A, Prong 2	Any additional limitations that integrate the judicial exception into a practical application	2106.05(a)–(c), (e)–(h)
2B	Any additional limitations beyond the judicial exception that, alone or in combination, were not “well-understood, routine, conventional”	2106.05(d)

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See Guidance 52, 55, 56. Here, there is no dispute with respect to USPTO Step 1, so we proceed to the remaining steps.

*USPTO Step 2A, Prong 1*

Prong 1 asks whether the claim recites an abstract idea, such as a mental process. Here, the claims recite dynamically adjusting a patient’s future care plan based upon how compliant the patient was in the past. Thus, “with the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.” *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016). Other than the generic “processor” and “instructions,” a human mind can “measure” a patient’s adherence, “compare” that measured adherence to the expected adherence, “calculate” compliance, “compare” that calculated compliance to a “determine[d]” threshold, and “dynamically adjust” the plan going forward. This is exactly what happens mentally when, for example, a dentist—who previously told you to floss every day—hears that you have not been flossing at all and thereafter lowers her expectations for you to floss at least once a week. Similarly, if a doctor told you to exercise at least twice a week and you at your next visit announced that you had been exercising every day, the doctor could mentally determine that your compliance was in excess of the previous recommendation and dynamically adjust her new recommendation to be that you keep up the exercise going forward. Thus, this case is similar to *SmartGene*, in which the Federal Circuit held a claim was directed to a mental process because “[c]laim 1 does no more than call on a ‘computing device,’ with basic functionality for comparing stored and

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input data and rules, to do what doctors do routinely.” *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x 950, 954 (Fed. Cir. 2014).

Other than dependent claim 4 (which we discuss below under prong 2), the dependent claims merely specify which information is used for various calculations (e.g., claim 2) or provide further mental processes (e.g., claim 6 reciting a further “determine” and “calculate” step based on “adherence deviations”). But these do not change that the processes can be performed in the human mind.

As the Federal Circuit has said, “we continue to treat analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146 (Fed. Cir. 2016) (quotation omitted). Thus, the claims recite mental processes, which are abstract ideas.

#### *USPTO Step 2A, Prong 2*

Prong 2 asks whether the claim recites any additional limitations that integrate the judicial exception into a practical application.

The only limitation in claim 1 beyond the abstract ideas noted above recites that the steps are to be performed by “one or more processors configured by machine-readable instructions.” However, the Supreme Court is clear that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 223 (2014).

Dependent claim 4 also recites a “user interface”; “vital sign measurement units”; “camera”; “medication intake monitoring unit”; and “multimedia unit.” However, the claim does not further utilize any of these

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components. Instead, claim 4 itself expressly states that each of these components is “for” its ordinary usage (e.g., “one or more vital sign measurement units *for* measuring one or more vital signs of the user”). Thus, these generic components are insufficient for the same reasons. *E.g.*, *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016) (“generic computer components such as an ‘interface’ . . . do not satisfy the inventive concept requirement”).

Although Appellant argues that the claims are “technical,” Appellant fails to identify any limitation outside of the mental processes, alone or in ordered combination, that improves the technology or is tied to a particular machine. *E.g.*, Appeal Br. 16. Appellant’s reliance on the “dynamically adjust” limitations is misplaced because “[t]he abstract idea itself cannot supply the inventive concept, no matter how groundbreaking the advance.” *Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019) (quotation omitted).

Thus, the claims do not integrate the recited abstract idea into a practical application.

#### *USPTO Step 2B*

This step asks whether the recited additional limitations beyond the judicial exception were not “well-understood, routine, conventional.”

As noted above, the Supreme Court is clear that a “processor” without more does not provide significantly more than the abstract idea. *Alice*, 573 U.S. at 223. The Federal Circuit likewise has held that generic components such as the “user interface” in claim 4 do not provide an inventive concept. *E.g.*, *Mortg. Grader*, 811 F.3d at 1324–25 (“generic computer components such as an ‘interface’ . . . do not satisfy the inventive concept requirement”).

Appellant argues that “a Section 101 rejection requires some evidence” that “the claimed process was previously done by humans” and hence that “at least a non-computer-implemented version of a claimed process was a well-understood, routine, conventional activity.” Reply Br. 9 (emphasis omitted). However, this misstates the test. The “well-understood, routine, conventional” portion of the test applies only to *additional* limitations *beyond* the abstract idea. *E.g.*, *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 79–80 (2012) (“any *additional steps* consist of well-understood, routine, conventional activity already engaged in by the scientific community; and *those steps*, when viewed as a whole, add nothing significant beyond the sum of their parts taken separately” (emphasis added)). As noted above, “[t]he abstract idea itself cannot supply the inventive concept, no matter how groundbreaking the advance.” *Trading Techs.*, 921 F.3d at 1093 (quotation omitted).

Accordingly, we sustain the rejection of claims 1–7 and 9–15.

#### DECISION

The following table summarizes the outcome of each rejection:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–7, 9–15	101	Eligibility	1–7, 9–15	

No time for taking subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.36(a)(1)(iv).

**AFFIRMED**