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LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK		MOSELEY, GREGORY D
20 Commerce Drive		
Cranford, NJ 07016		

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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte ROBERT WARTENFELD, ZIV OFEK, EYAL GREENBERG,

ZIV GOME, and SHIRI BEN-TAL

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Appeal 2018-006175
Application 14/336,467
Technology Center 3600

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Before JOHN A. EVANS, BETH Z. SHAW, and STEVEN M.
AMUNDSON, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] seeks our review under 35 U.S.C. § 134(a) of the

Examiner's final rejection of Claims 1–20, all pending claims. Appeal Br. 1.

We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.[2]

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[1] We use the word "Appellant" to refer to "Applicant" as defined in
37 C.F.R. § 1.42. Appellant states the real party in interest is T-Vak
Industries LLC. Appeal Br. 1.

[2] Rather than reiterate the arguments of Appellant and the Examiner, we

STATEMENT OF THE CASE

The claims relate to a computer implemented method for prescribing a therapeutic regimen. *See* Abstract.

Invention

Claims 1, 10, and 12 are independent. Appeal Br. 2. An understanding of the invention can be derived from a reading of Claim 1, which is reproduced in Table 1.

References and Rejections [3]

Velarde	US 2009/0281836 A1	Nov. 12, 2009
McCormick	US 2002/0035484 A1	Mar. 21, 2002
Rooney	US 2008/0177571 A1	July 24, 2008
Smith	US 2014/0122127 A1	May 1, 2014

1. Claims 1–20 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more. Final Act. 3–8.

2. Claims 1, 2, 4, 7, 8, 10–13, 15, 18, and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Smith and Velarde. Final Act. 9–19.

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refer to the Appeal Brief (filed January 29, 2018, "Appeal Br."), the Reply Brief (none filed), the Examiner's Answer (mailed March 22, 2018, "Ans."), the Final Action (mailed July 27, 2017, "Final Act."), and the Specification (filed February 13, 2017, "Spec.") for their respective details.

[3] The present application was examined under the AIA first inventor to file provisions. Final Act. 2.

3. Claims 3, 5, 6, 14, 16, and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Smith, Velarde, and McCormick. Final Act. 19–23.

4. Claims 9 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Smith, Velarde, and Rooney. Final Act. 23–25.

ANALYSIS

We have reviewed the rejections of Claims 1–20 in light of Appellant's arguments that the Examiner erred. We have considered in this Decision only those arguments Appellant actually raised in the Brief. Any other arguments which Appellant could have made but chose not to make in the Brief are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis. We consider Appellant's arguments as they are presented in the Appeal Brief, pages 4–14.

CLAIMS 1–20: INELIGIBLE SUBJECT MATTER

Appellant argues these claims as a group in view of the recitations of Claim 1. Appeal Br. 10–11. Therefore, we decide the appeal of the § 101 rejection on the basis of representative Claim 1 and refer to the rejected claims collectively herein as "the claims." *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

We reviewed the record *de novo*. *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010) ("Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review de novo.").

Based upon our review of the record in light of recent policy guidance with respect to patent-eligible subject matter rejection under 35 U.S.C. § 101,[4] we affirm the rejection of Claims 1–20 for the specific reasons discussed below.

35 U.S.C. § 101

Section 101 provides that a patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. The Supreme Court has long recognized, however, that § 101 implicitly excludes "[l]aws of nature, natural phenomena, and abstract ideas" from the realm of patent-eligible subject matter, as monopolization of these "basic tools of scientific and technological work" would stifle the very innovation that the patent system aims to promote. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)); *see also Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–78 (2012); *Diamond v. Diehr*, 450 U.S. 175, 185 (1981).

Under the mandatory Revised Guidance, we reconsider whether Appellant's claims recite:

1. any **judicial exceptions**, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human interactions such as a fundamental economic practice, or mental processes), and

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[4] *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Revised Guidance").

2. **additional elements** that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim, (1) recites a judicial exception, and (2) does not integrate that exception into a practical application, do we then reach the issue of 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.

A.   Whether the claims recite a judicial exception.

The Revised Guidance extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract-idea exception includes the following groupings of subject matter, when recited as such in a claim limitation(s) (that is, when recited on their own or *per se*): (a) mathematical concepts,[5] i.e., mathematical relationships, mathematical formulas, equations,[6] and mathematical calculations[7]; (b) certain methods of

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[5] *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("The concept of hedging . . . reduced to a mathematical formula . . . is an unpatentable abstract idea.").

[6] *Diehr*, 450 U.S. at 191 ("A mathematical formula as such is not accorded the protection of our patent laws"); *Parker v. Flook*, 437 U.S. 584, 594 (1978) ("[T]he discovery of [a mathematical formula] cannot support a patent unless there is some other inventive concept in its application.").

[7] *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018)

organizing human activity—fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions)[8]; and (c) mental processes—concepts performed in the human mind (including observation, evaluation, judgment, opinion).[9]

The preamble of independent Claim 1 recites: "A computer implemented method for prescribing a therapeutic regimen, comprising." The limitations recited in the body of the claim are analyzed in Table I against the categories of abstract ideas as set forth in the Revised Guidance.

Claim 1	Revised Guidance, p. 52
[a][10] receiving, by one or more computing devices, prescription information for a patient, the	Insignificant extra-solution activity, e.g., mere data-gathering. Rev. Guid. 55, n. 31.

(holding that claims to a "series of mathematical calculations based on selected information" are directed to abstract ideas).

[8] *Alice*, 573 U.S. at 219–20 (concluding that use of a third party to mediate settlement risk is a "fundamental economic practice" and thus an abstract idea); *see* Revised Guidance, at 52 n.13 for a more extensive listing of "certain methods of organizing human activity" that have been found to be abstract ideas.

[9] *Mayo*, 566 U.S. at 71 ("'[M]ental processes[ ] and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work'" (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972))).

[10] Step designators, e.g., "[a]," were added to facilitate discussion.

prescription information including information representing a medical condition identified by a prescriber and a prescription identifier;	
[b] extracting from the prescription information, by the one or more computing devices, the prescription identifier and the information representing the identified medical condition;	Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion).
[c] determining, by the one or more computing devices, the prescription identifier indicates a diagnostic-based prescription request, the diagnostic-based prescription request being associated with a treatment database storing one or more virtual treatment kits, the one or more virtual treatment kits each associated with one or more medical conditions;	Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion).
[d] retrieving from the treatment database, by the one or more computing devices, a first virtual treatment kit from the one or more virtual kits based on the identified medical condition extracted from the prescription information, the first virtual treatment kit including component information representing at least one predetermined medication and a treatment plan for administering the at least one predetermined medication for treating the identified medical	Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion).

condition extracted from the prescription information; and	
[e] transmitting, by the one or more computing devices, the component information associated with the first virtual treatment kit to a user device for display.	Insignificant extra-solution activity.

In view of Table I, we find limitations [b]–[d] of independent Claim 1 recites abstract ideas, i.e., mental processes. Thus, Claim 1 recites a judicial exception, *per se*.

Step 2A(ii): Judicial Exception Integrated into a Practical Application?

If the claims recite a patent-ineligible concept, as we conclude above, we proceed to the "practical application" *Step 2A(ii)* wherein we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.

For the reasons which follow, we conclude that Appellant's claims do not integrate the judicial exception into a practical application.

MPEP § 2106.05(a) "Improvements to the Functioning of a Computer or to Any Other Technology or Technical Field."

"In determining patent eligibility, examiners should consider whether the claim 'purport(s) to improve the functioning of the computer itself'" or "any other technology or technical field." MPEP § 2106.05(a).

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With respect to technological improvements, Appellant analogizes to *Enfish* and contends "Appellant's technological improvement concerns . . . [the] claims increase the accuracy of delivering prescription therapeutics to patients." Appeal Br. 6. Appellant argues "the disclosed system is designed to allow prescribers 'to prescribe an effective treatment for the patient's condition without having to be updated on the latest medications that can be used for that condition.'" *Id.* (quoting Spec. ¶ 30).

The *Enfish* Court found the claims provided an improvement in computer function because "the claims are not simply directed to any form of storing tabular data, but instead are specifically directed to a self-referential table for a computer database." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). However, in contrast to *Enfish*, the fact that the doctor does not have to be "updated on the latest medications that can be used," as argued by Appellant, is not a technology, *per se*. The claims recite "computing devices" and "treatment databases." We find that such generic recitations of computing elements fail to transform a patent-ineligible concept into an eligible one. *See 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," "network," and "database," fail to satisfy the inventive concept requirement); *Alice*, 573 U.S. at 226 ("Nearly every computer will include a 'communications controller' and a 'data storage unit' capable of performing the basic calculation, storage, and transmission functions required by the method claims.").

Appellant contends, similarly to *Enfish*, the claims improve the ability of the system to prescribe an effective treatment for a patient's

condition which is an improvement in the medical device and medical software arts. Appeal Br. 6 (citing Spec. ¶ 69). Appellant argues the claimed system [as recited in Claim 9], by providing therapeutics based on the medical diagnosis rather than specific medications, allows for the determination of medical outbreaks in a given area or community based on a real-time assessment of the location at which the virtual treatment kits associated with the medical diagnosis are prescribed. *Id.* Appellant further argues such real-time processing cannot be performed by a human using pencil or paper, nor can a human perform any of the claimed features which interpret computer information. *Id.*

The Examiner finds Appellant's analogy to *Enfish* to be inapt because the claims do not improve a technological environment. Ans. 4. Rather, the Examiner finds the claims merely implement the abstract idea using a generic computer. *Id.* (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) ("The present case is different: the focus of the claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.")). The Examiner finds the "speed and accuracy of a physician determining a proper treatment regimen to a patient has been a problem that has required improvement long before computers, and the problem was caused by the limitations on humans, not by limitations on the technology. Therefore, the claims do not perform the abstract [idea] to improve the technology's capability to function as a tool. Rather, it uses the technology as a tool to improve the performance of the abstract idea." *Id.* at 5.

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Appellant argues contrary to the Examiner, that in the claimed system the physician does not determine the treatment regimen, but only determines the diagnosis from which the system determines the treatment regimen. Appeal Br. 6 (citing Spec. ¶ 69). Appellant further argues the claimed system allows for the determination of medical outbreaks in a given area or community based on the locations at which the claimed virtual treatment kits are used, a technology not within the capabilities of medical professionals. Appeal Br. 6. Appellant's argument is not commensurate in scope with independent Claims 1, 10, and 12 which do not recite limitations relating to determination of medical outbreaks. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) ("[A]ppellant's arguments fail from the outset because . . . they are not based on limitations appearing in the claims."); *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) ("[The] proffered facts . . . are not commensurate with the claim scope and are therefore unpersuasive."). That is, Appellant cannot rely on unclaimed features for eligibility. *See ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 769 (Fed. Cir. 2019); *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369–70 (Fed. Cir. 2018); *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1338–39 (Fed. Cir. 2017).

Dependent Claims 9 and 20 further recite limitations relating to "the determin[ation of] occurrence information indicating a prevalence of the given medical condition, as Appellant contends." *See* Appeal Br. 6.

The claims collect data, recognize certain data within the collected data set, and present the data for display, which the courts have recognized

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as abstract. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014).

MPEP § 2106.05(b) Particular Machine.

The *Bilski* machine-or-transformation test is only applicable to method (process) claims on appeal in the present application. Appellant discloses generic computer devices. *See* Spec. ¶ 36 ("[e]ach processor of the one or more processors 312 may be a conventional processor, such as a processor found in commercially available computers."). Nor do we find disclosure of anything other than generic computer hardware or software.

MPEP § 2106.05(c) Particular Transformation.

This section of the MPEP guides: "Another consideration when determining whether a claim recites significantly more is whether the claim effects a transformation or reduction of a particular article to a different state or thing." "'Transformation and reduction of an article to a different state or thing is *the clue* to the patentability of a process claim that does not include particular machines.'" *Bilski*, 561 U.S. at 658 (quoting *Benson*, 409 U.S. at 70).

The claims select and analyze certain electronic data. The selection of electronic data is not a "transformation or reduction of an *article* into a different state or thing constituting patent-eligible subject matter[.]" *See In re Bilski*, 545 F.3d 943, 962 (Fed. Cir. 2008) (emphasis added); *see also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) ("The mere manipulation or reorganization of data . . . does not satisfy the transformation prong."). Applying this guidance here, we conclude

Appellant's method claims fail to satisfy the transformation prong of the *Bilski* machine-or-transformation test.

MPEP § 2106.05(e) Other Meaningful Limitations.

This section of the MPEP guides:

> *Diamond v. Diehr* provides an example of a claim that recited meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment. 450 U.S. 175 . . . (1981). In *Diehr*, the claim was directed to the use of the Arrhenius equation (an abstract idea or law of nature) in an automated process for operating a rubber-molding press. 450 U.S. at 177-78 . . . . The Court evaluated additional elements such as the steps of installing rubber in a press, closing the mold, constantly measuring the temperature in the mold, and automatically opening the press at the proper time, and found them to be meaningful because they sufficiently limited the use of the mathematical equation to the practical application of molding rubber products. 450 U.S. at 184, 187 . . . . In contrast, the claims in *Alice Corp. v. CLS Bank International* did not meaningfully limit the abstract idea of mitigating settlement risk. 573 U.S. . . . . In particular, the Court concluded that the additional elements such as the data processing system and communications controllers recited in the system claims did not meaningfully limit the abstract idea because they merely linked the use of the abstract idea to a particular technological environment (i.e., "implementation via computers") or were well-understood, routine, conventional activity.

MPEP § 2106.05(e).

"[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. Similarly as in *Alice*, we find that "[t]aking the claim elements separately, the function performed by the

computer at each step of the process is '[p]urely conventional.'" *Id.* "In
short, each step does no more than require a generic computer to perform
generic computer functions." *Id.* We find that Appellant's claims do not
add meaningful limitations beyond generally linking the use of the judicial
exception to a particular technological environment.

MPEP § 2106.05(f) Mere Instructions to Apply an Exception.

Appellant does not persuasively argue that their claims do any more
than to merely invoke generic computer components merely as a tool in
which the computer instructions apply the judicial exception.

MPEP § 2106.05(g) Insignificant Extra-Solution Activity.

The claims acquire and display data, which are classic examples of
insignificant extra-solution activity. *See, e.g.*, *Bilski*, 545 F.3d at 963 (en
banc), *aff'd sub nom, Bilski*, 561 U.S. 593.

MPEP § 2106.05(h) Field of Use and Technological Environment.

> [T]he Supreme Court has stated that, even if a claim does not
> wholly pre-empt an abstract idea, it still will not be limited
> meaningfully if it contains only insignificant or token pre- or
> post-solution activity—such as identifying a relevant audience,
> a category of use, field of use, or technological environment.

Ultramercial, Inc. v. Hulu, LLC, 722 F.3d 1335, 1346 (Fed. Cir. 2013). We
find the claims manipulate "prescription information for a patient," which is
simply a field of use that attempts to limit the abstract idea to a particular
technological environment. We do not find Appellant's arguments to be
persuasive because "[t]he courts have also identified examples in which a
judicial exception has not been integrated into a practical application."

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Revised Guidance, 84 Fed. Reg. at 55. The claims fail to recite a practical application where the additional element does more than generally link the use of a judicial exception to a particular technological environment or field of use. *Id.* The mere application of an abstract idea in a particular field is not sufficient to integrate the judicial exception into a practical application. *See id.* at 55 n.32. In view of the foregoing, we conclude the claims are "directed to" a judicial exception.

3.   Well-understood, routine, conventional.

Because the claims recite a judicial exception and do not integrate that exception into a practical application, we must then reach the issue of whether the claim adds a specific limitation beyond the judicial exception that is not "well-understood, routine, conventional" in the field. Revised Guidance, 84 Fed. Reg. at 56.

The written description describes the claimed computer system consistent with its being "well-understood, routine, [and] conventional":

> [e]ach processor of the one or more processors 312 may be a conventional processor, such as a processor found in commercially available computers.

Spec. ¶ 35.

> [t]he memory 314 may be of a type of memory including a non-transitory computer-readable medium, or other medium that stores data that may be read with the aid of an electronic device, such as a hard-drive, memory card, read-only memory ("ROM"), random access memory ("RAM"), digital versatile disc ("DVD") or other optical disks, as well as other write-capable and read-only memories.

Spec. ¶ 36.

the data 318 may be stored in computer registers, in a relational database as a table having a plurality of different fields and records, XML documents, or flat files.

Spec. ¶ 38.

4.   Specified at a high level of generality.

It is indicative of the absence of an inventive concept where the claims simply append well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Revised Guidance, 84 Fed. Reg. at 56.

The claims fail to recite any specific steps of an algorithm, nor does Appellant cite any Specification disclosure for the required specificity.

We find the limitations are specified at such a high level of generality consistent with the absence of an inventive concept. Considering the claim limitations as an ordered combination adds nothing to the abstract idea that is not already present when the limitations are considered separately. *See Mayo*, 566 U.S. at 79. The ordered combination of limitations amounts to nothing more than certain mental processes implemented with generic computer components that operate "in a conventional way." *See also Alice*, 573 U.S. at 225–26. Therefore, we conclude that none of the claim limitations, viewed "both individually and as an ordered combination," amount to significantly more than the judicial exception in order to sufficiently transform the nature of the claims into patent-eligible subject matter. *See Alice*, 573 U.S. at 217 (internal quotations omitted) (quoting *Mayo*, 566 U.S. at 79).

In view of the foregoing, we sustain the rejection of claims 1–20 under 35 U.S.C. § 101.

CLAIMS 1–20:
OBVIOUSNESS

Appellant argues these claims as a group in view of the recitations of Claim 1. Appeal Br. 14. Therefore, we decide the appeal of the § 103 rejection on the basis of representative Claim 1 and refer to the rejected claims collectively herein as "the claims." See 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

Prescription Identifier.

The Examiner finds Smith generally teaches the invention recited in Claim 1 except Smith fails to teach "the prescription having a prescription identifier, extracting the prescription identifier, and determining the prescription identifier indicates a diagnostic-based prescription request." Final Act. 12. The above quotation, presented by the Examiner is a paraphrase, but not a direct quote, of Claim 1.

The Examiner finds Velarde teaches a "document containing a prescription identifier, extracting the prescription identifier, and determining the prescription identifier indicates a diagnostic-based prescription request." *Id.* The Examiner finds this limitation is taught by a synthesis of Velarde ¶ 27 ("the medical records data comprise documents; the documents include document identifiers; the documents are sortable into predetermined categories responsive to the document identifier; and the sorted document is associated with a category"), Velarde ¶ 120 ("[t]he retrieved medical records are in the form of documents 1703 that each has at least one unique document identifier 1704. The unique document identifier 1704 may be used to assist in sorting the documents, for example, by report type"), and

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Appellant's Specification ¶ 20 ("[t]he prescription identifier is used to identify that a prescription is a diagnostic based prescription, such as DBRx").[11]

Appellant contends Velarde is silent as to what information the document identifier may contain, but only discloses the identifier may be used to sort the documents into predetermined categories. Appeal Br. 12. Appellant argues Velarde fails to teach a document identifier indicates a diagnostic-based prescription request. *Id.*

The Examiner finds Velarde teaches document identifiers that identify documents by type. Ans. 14. The Examiner finds "there is no explicit definition as to what exactly Velarde defines as a document identifier." *Id.* The Examiner explains Velarde does not disclose what type of information is indicated by the document identifier, but finds that in principle, Velarde's document identifier "*is capable*" of indicating the claimed "diagnostic-based prescription request." *Id.* (emphasis added).

Claim 1 recites, *inter alia*, "determining, by the one or more computing devices, the prescription identifier indicates a diagnostic-based prescription request." The Examiner explicitly finds Smith fails to teach this limitation, but cites a combination of Velarde ("[t]he retrieved medical records are in the form of documents 1703 that each has at least one unique document identifier") and *Appellant's Specification* ("[t]he prescription identifier is used to identify that a prescription is a diagnostic based prescription, such as DBRx"). Final Act. 12 (citing Spec., ¶ 20).

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[11] The citation to Spec. ¶ 20 is not a direct quote.

We "recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper." MPEP 2145(X)(A)), quoting *In re McLaughlin*, 443 F.2d 1392 (CCPA 1971). The present *prima facie* case was synthesized, in part, from Appellant's disclosure of a "diagnostic based prescription," without a finding that Appellant disclosed admitted prior art, and thus is impermissible hindsight. "[T]he path that leads an inventor to the invention is expressly made irrelevant to patentability by statute."). *Life Techs., Inc. v. Clontech Labs., Inc.*, 224 F.3d 1320, 1325 (Fed. Cir. 2000).

In view of the foregoing, we do not sustain the rejection of Claims 1–20 under 35 U.S.C. § 103.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–20	101	Eligibility	1–20	
1, 2, 4, 7, 8, 10–13, 15, 18, and 19	103	Smith and Velarde, Rooney, and McCormick		1, 2, 4, 7, 8, 10–13, 15, 18, and 19
3, 5, 6, 14, 16, and 17	103	Smith, Velarde, and McCormick		3, 5, 6, 14, 16, and 17
9 and 20	103	Smith, Velarde, and Rooney		9 and 20
Overall Outcome			1–20	

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). *See* 37 C.F.R. § 41.50(f).

<u>AFFIRMED</u>