UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/741,397	05/05/2010	Michael Grass	2007P01404WOUS	7160

24737   7590   03/05/2020
PHILIPS INTELLECTUAL PROPERTY & STANDARDS
465 Columbus Avenue
Suite 340
Valhalla, NY 10595

EXAMINER
MORGAN, ROBERT W

ART UNIT	PAPER NUMBER
3626	

NOTIFICATION DATE	DELIVERY MODE
03/05/2020	ELECTRONIC

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

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

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

katelyn.mulroy@philips.com
marianne.fox@philips.com
patti.demichele@Philips.com

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

Ex parte MICHAEL GRASS and ANDY ZIEGLER

_____

Appeal 2018–007386
Application 12/741,397
Technology Center 3600

_____

Before ANTON W. FETTING, CYNTHIA L. MURPHY, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

Michael Grass and Andy Ziegler (Appellant[2]) seeks review under
35 U.S.C. § 134(a) of a final rejection of claims 1–20, the only claims
pending in the application on appeal. We have jurisdiction over the appeal
pursuant to 35 U.S.C. § 6(b).

---

[1] Our Decision will make reference to the Appellant's Appeal Brief
("Appeal Br.," filed November 3, 2017) and Reply Brief ("Reply Br.," filed
July 12, 2018), and the Examiner's Answer ("Ans.," mailed May 30, 2018),
and Final Action ("Final Act.," mailed June 21, 2017).

[2] We use the word "Appellant" to refer to "applicant" as defined in
37 C.F.R. § 1.42. Appellant identifies the real party in interest as
Koninklijke Philips N.V. (Appeal Br. 1).

The Appellant invented a way of determining a parameter of a moving object. Specification 1:3–4.

An understanding of the invention can be derived from a reading of exemplary claim 9, which is reproduced below (bracketed matter and some paragraphing added).

> 9. A method for determining a parameter of a moving object, the method comprising:
>
> [1] providing an adaptive model of the object by an adaptive model providing unit,
>
> [2] providing a user interface that allows a user to select a preshaped region from a subset of predefined preshaped regions of the adaptive model,
>
> [3] providing a spatially and temporally dependent image data set of the moving object by an image data set providing unit,
>
>> wherein the spatially and temporally dependent image data set of the moving object comprises image data generated from at least one system selected from a group comprised of computed tomography imaging, magnetic resonance imaging, ultrasound imaging, and nuclear imaging,
>
> [4] adapting at least a preshaped region of the adaptive model to the spatially and temporally dependent image data set
>
>> to determine a spatially and temporally dependence of the preshaped region by an adaptation unit,
>
> [5] determining the parameter of the moving object depending on the spatially and temporally dependence of the defined region by a parameter determining unit.

The Specification incorporates the following prior art by reference:

J. von Berg et al., "Multi-surface Cardiac Modelling, Segmentation, and Tracking", in A.F. Frangi, P.I. Radeva, A. Santos, and M. Hernandez, editors, LNCS 3504, Functional Imaging and Modelling of the Heart, pages 1-11, Springer Verlag, 2005.

Spec. 2:15–19.

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

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of results desired.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to Claim Construction

    01.   The disclosure contains no lexicographic definition of "adapted."

Facts Related to Appellant's Disclosure

    02.   Appellant cites Specification 2:1–3; 4:15–5:3; 5:12–14; 10:23–12:3; and 14:7–13 as support for claim 9 limitation [4] of "adapting at least a preshaped region of the adaptive model to the spatially and temporally dependent image data set to determine a spatially and temporally dependence of the preshaped region by an adaptation unit." Appeal Br. 3; Claim 9 limitation [4]. All of these cited portions except for Specification 10:23–12:3 describe no more than the replicated claim language. Specification 10:23–

12:3 describes a mathematical optimization algorithm for adapting a model as described in J. von Berg.

Facts Related to the Prior Art

J. von Berg

03.   J. von Berg is directed to describing how to segment and label all main chambers (both ventricles and atria) and connected vessels (arteries and main vein trunks) from such images and to track their movement over the cardiac cycle. J. von Berg Abstract.

04.   J. von Berg describes a mathematical optimization algorithm for adapting a model. J. von Berg 4–6 (Section 3 Model Adaptation).

ANALYSIS

Initially we construe claim 9 limitation [4] of adapting a preshaped region of the adaptive model to the spatially and temporally dependent image data set. None of the claims recite how the adaptation occurs and the Specification only describes this adapting with the replicated claim language and with optimizing an objective function, which is a mathematical algorithm. FF 02; Specification 11. The Specification also incorporates an article by J. von Berg by reference as showing an example of how adapting occurs. This article describes a more detailed mathematical optimization algorithm for doing so. FF 03–04. Thus, we construe adapting a preshaped region of the model to the data set as applying a mathematical optimization algorithm that optimizes some objective function as the process to achieve the desired adaptation.

STEP 1[3]

Claim 9, as a method claim, nominally recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. The issue before us is whether it is directed to a judicial exception without significantly more.

STEP 2

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, "[w]hat else is there in the claims before us? To answer that question, . . . consider the elements of each claim both individually and "as an ordered combination" to determine whether the additional elements "transform the nature of the claim" into a patent-eligible application. [The Court] described step two of this analysis as a search for an ""inventive concept""—*i.e.*, an element or combination of elements that is "sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself."

Alice Corp. v. CLS Bank Int'l, 573 U.S. 208, 217–18 (2014) (citations omitted) (*citing Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66 (2012)). To perform this test, we must first determine what the claims are directed to. This begins by determining whether the claims recite one of the judicial exceptions (a law of nature, a natural phenomenon, or an abstract idea). Then, if the claims recite a judicial exception, determining whether the claims at issue are directed to the recited judicial exception, or

---

[3] For continuity of analysis, we adopt the steps nomenclature from 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Revised Guidance").

whether the recited judicial exception is integrated into a practical application of that exception, i.e., that the claims "apply, rely on, or use 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." Revised Guidance, 84 Fed. Reg. at 54. If the claims are directed to a judicial exception, then finally determining whether the claims provide an inventive concept because the additional elements recited in the claims provide significantly more than the recited judicial exception.

STEP 2A Prong 1

At a high level, and for our preliminary analysis, we note that method claim 9 recites providing model data, providing user interface data, providing image data, adapting model data to the image data, and determining parameter data. Providing data is receiving data. Providing such data in the form of a user interface is just using a conventional computer. Determining data is rudimentary data analysis. Adapting model data to image data in the context of performing data optimization for such adaptation is mathematical computation and analysis. Thus, claim 9 recites receiving and analyzing data. None of the limitations recites technological implementation details for any of these steps, but instead recite only results desired by any and all possible means.

From this we see that claim 9 does not recite the judicial exceptions of either natural phenomena or laws of nature.

Under Supreme Court precedent, claims directed purely to an abstract idea are patent in-eligible. As set forth in the Revised Guidance, which extracts and synthesizes key concepts identified by the courts, abstract ideas

6

include (1) mathematical concepts[4], (2) certain methods of organizing human activity[5], and (3) mental processes[6]. Among those mathematical concepts listed in the Revised Guidance are mathematical calculations. Like those concepts, claim 9 recites the concept of determining a data parameter. Specifically, claim 9 recites operations that would ordinarily take place in advising one to determine the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data. The advice to determine the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data involves adapting a model to data, which is a mathematical optimization act. For example, claim 9 recites "adapting . . . the adaptive model to the . . . data set," which is an activity that would take place whenever one is mathematically optimizing a model fit.

The Examiner determines the claims to be directed to an idea of itself. Final Act. 3.

The preamble to claim 9 recites that it is a method for determining a parameter of a moving object. The steps in claim 9 result in determining a

---

[4] *See, e.g., Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); *Mackay Radio & Telegraph Co. v. Radio Corp. of Am.*, 306 U.S. 86, 94 (1939); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018).

[5] *See, e.g., Bilski*, 561 U.S. at 628; *Alice*, 573 U.S. at 219–20; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed Cir. 2014); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1383 (Fed. Cir. 2017); *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1160–61 (Fed. Cir. 2018).

[6] *See, e.g., Benson*, 409 U.S. at 67; *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–72 (Fed. Cir. 2011); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

data parameter by determining the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data absent any technological mechanism other than a conventional computer for doing so.

As to the specific limitations, limitations 1–3 recite receiving data. Limitations 4 and 5 recite generic and conventional analyzing of numeric geometric data, which advise one to apply generic functions to get to these results. The limitations thus recite advice for determining the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data. To advocate determining the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data is conceptual advice for results desired and not technological operations.

The Specification at 1:3–4 describes the invention as relating to determining a parameter of a moving object. Thus, all this intrinsic evidence shows that claim 9 recites determining a data parameter. This is consistent with the Examiner's determination.

This in turn is an example of mathematical calculations as a certain method of mathematical concepts because adapting, i.e. optimizing the fit, of a model is a mathematical optimization computation from the mathematical field of operations research. The remaining steps are mere data gathering and incidental post processing steps.

Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter.

> Nothing "transforms" the abstract idea of encoding and decoding into patent-eligible subject matter. Nor does the presence of a mathematical formula dictate otherwise. Claims

8

> that are directed to a non-abstract idea are not rendered abstract
> simply because they use a mathematical formula. But the
> converse is also true: A claim directed to an abstract idea does
> not automatically become eligible merely by adding a
> mathematical formula.

RecogniCorp, LLC v. Nintendo Co., Ltd., 855 F.3d 1322, 1328 (2017).

> Here, the focus of the claims is not any improved computer or
> network, but the improved mathematical analysis; and indeed,
> the specification makes clear that off-the-shelf computer
> technology is usable to carry out the analysis

SAP Am., Inc. v. InvestPic LLC, 890 F.3d 1016, 1022 (Fed. Cir. 2018).

> merely calling for a mathematical concept to be performed
> more efficiently or with a particular input does not amount to an
> application of the mathematical concept that is patent-eligible.
> *See Diehr*, 450 U.S. at 182 n.7, 187.

In re Gitlin, 775 F. App'x 689, 691 (Fed. Cir. 2019)(non-precedential).

Alternately this is an example of concepts performed in the human mind as mental processes because the steps of receiving 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). Claim 9, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data reception and analysis and does not recite an improvement to a particular computer technology. *See, e.g.*, *McRO, Inc. v. Bandai Namco Games Am. Inc*., 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they "focused on a specific asserted improvement in computer animation"). As such, claim 9 recites receiving and analyzing data, and not a technological implementation or application of that idea.

From this we conclude that at least to this degree, claim 9 recites determining a data parameter by determining the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data, which is mathematical calculations, one of mathematical concepts identified in the Revised Guidance, and, thus, an abstract idea.

STEP 2A Prong 2

The next issue is whether claim 9 not only recites, but is more precisely directed to this concept itself or whether it is instead directed to some technological implementation or application of, or improvement to, this concept i.e. integrated into a practical application.[7]

> At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. At some level, "all inventions ... embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. "[A]pplication[s]" of such concepts " 'to a new and useful end,' " we have said, remain eligible for patent protection. Accordingly, in applying the § 101 exception, we must distinguish between patents that claim the " 'buildin[g] block[s]' " of human ingenuity and those that integrate the building blocks into something more.

Alice, 573 U.S. at 217 (citations omitted).

Taking the claim elements separately, the operation performed by the computer at each step of the process is expressed purely in terms of results, devoid of implementation details. Steps 1–3 are pure data gathering steps. Limitations describing the nature of the data do not alter this. Steps 4 and 5 recite generic computer processing expressed in terms of results desired by

---

[7] *See, e.g.*, *Alice*, 573 U.S. at 223, discussing *Diamond v. Diehr*, 450 U.S. 175 (1981).

any and all possible means and so present no more than conceptual advice. All purported inventive aspects reside in how the data is interpreted and the results desired, and not in how the process physically enforces such a data interpretation or in how the processing technologically achieves those results.

Viewed as a whole, Appellant's claim 9 simply recites the concept of determining a data parameter by determining the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data as performed by a generic computer. This is no more than conceptual advice on the parameters for this concept and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

Claim 9 does not, for example, purport to improve the functioning of the computer itself. Nor does it effect an improvement in any other technology or technical field. The 15+ pages of Specification do not bulge with disclosure, but only spell out different generic equipment used to acquire the data the claims operate upon, but not the equipment that performs the claims themselves, and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of determining a data parameter by determining the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, claim 9 at issue amounts to nothing significantly more than an instruction to apply determining a data parameter by determining the parameter based on a dependence in turn determined by

using mathematical optimization to adapt a model to data 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.

None of the limitations reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field, applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease or medical condition, implements a judicial exception with, or uses a judicial exception in conjunction with, a particular machine or manufacture that is integral to the claim, effects a transformation or reduction of a particular article to a different state or thing, or applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception.

We conclude that claim 9 is directed to achieving the result of determining a data parameter by advising one to determine the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data, as distinguished from a technological improvement for achieving or applying that result. This amounts to mathematical calculations, which fall within mathematical concepts that constitute abstract ideas. The claim does not integrate the judicial exception into a practical application.

STEP 2B

The next issue is whether claim 9 provides an inventive concept because the additional elements recited in the claim provide significantly more than the recited judicial exception.

The introduction of a computer into the claims does not generally alter the analysis at *Mayo* step two.

> the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea "while adding the words 'apply it'" is not enough for patent eligibility. Nor is limiting the use of an abstract idea "'to a particular technological environment.'" Stating an abstract idea while adding the words "apply it with a computer" simply combines those two steps, with the same deficient result. Thus, if a patent's recitation of a computer amounts to a mere instruction to "implement[t]" an abstract idea "on . . . a computer," that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of "additional feature[e]" that provides any "practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself."

Alice, 573 U.S. at 223–24 (citations omitted).

"[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 the process is purely conventional. Using a computer for receiving and analyzing data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these

13

computer functions are generic, routine, conventional computer activities
that are performed only for their conventional uses. *See Elec. Power Grp.
LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). *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"). None of
these activities is used in some unconventional manner nor does any produce
some unexpected result. Appellant does not contend it invented any of these
activities. In short, each step does no more than require a generic computer
to perform generic computer functions. As to the data operated upon, "even
if a process of collecting and analyzing information is 'limited to particular
content' or a particular 'source,' that limitation does not make the collection
and analysis other than abstract." *SAP Am.*, 898 F.3d at 1168.

Considered as an ordered combination, the computer components of
Appellant's claim 9 add nothing that is not already present when the steps
are considered separately. The sequence of data reception-analysis is
equally generic and conventional. *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) (sequence of data retrieval, analysis,
modification, generation, display, and transmission), *Two-Way Media Ltd. v.
Comcast Cable Communications, LLC*, 874 F.3d 1329, 1339 (Fed. Cir.
2017) (sequence of processing, routing, controlling, and monitoring). The
ordering of the steps is therefore ordinary and conventional.

We conclude that claim 9 does not provide an inventive concept because the additional elements recited in the claim do not provide significantly more than the recited judicial exception.

REMAINING CLAIMS

Claim 9 is representative. The remaining method claims merely describe process parameters. We conclude that the method claims at issue are directed to a patent-ineligible concept itself, and not to the practical application of that concept.

As to the structural claims, they

> are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long "warn[ed] ... against" interpreting § 101 "in ways that make patent eligibility 'depend simply on the draftsman's art.'"

Alice, 573 U.S. at 226. As a corollary, the claims are not directed to any particular machine.

LEGAL CONCLUSION

From these determinations we further determine that the claims do not recite an improvement to the functioning of the computer itself or to any other technology or technical field, a particular machine, a particular transformation, or other meaningful limitations. From this we conclude the claims are directed to the judicial exception of the abstract idea of mathematical concepts as exemplified by the mathematical calculations of determining a data parameter by advising one to determine the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data, without significantly more.

15

APPELLANT'S ARGUMENTS

As to Appellant's Appeal Brief arguments, we adopt the Examiner's determinations and analysis from Final Action 3–9 and Answer 7–13 and reach similar legal conclusions. We now turn to the Reply Brief.

We are not persuaded by Appellant's argument that "independent claims 1, 9 and 10 are directed to determining a parameter of a moving object." Reply Br. 3 (emphasis omitted). As we determine *supra*, these claims are directed to the judicial exception of the abstract idea of mathematical concepts as exemplified by the mathematical calculations of determining a data parameter by advising one to determine the parameter based on a dependence in turn determined by using mathematical optimization to adapt a model to data, without significantly more. Claim 9 does not recite a moving object, but instead recites a spatially and temporally dependent image data set representing a moving object. All of the limitations operate on data. None of the limitations are affected by or affect a physical object. Instead the limitations perform some mathematical optimization upon binary data and output some parameter. A parameter is itself a conceptual idea, not a physical entity.

We are not persuaded by Appellant's argument that "independent claims 1 and 10 each require the use of computer processors, and/or computer readable storage medium having computer readable instructions embodied therewith. Furthermore, each of the independent claims require the use of system that generates spatially and temporally dependent image data set and enumerate the specific modalities." Reply Br. 3 (emphasis omitted). The claims recite performing data retrieval and mathematical computation in the context of a computer. This is not the same as requiring

a computer. "The Supreme Court and this court 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, 1258 (Fed. Cir. 2016).

We are not persuaded by Appellant's argument that the "specification indicates advantages over a conventional practice of a multi-surface triangular model adapted to a cardiac image data set and a rest phase determined from the movement of a predefined part of a wall." Reply Br. 4. That an abstract idea such as a mathematical algorithm has advantages does not confer eligibility.

> GTG's attempts to distinguish this case on the ground that the method of claim 1 is useful have no basis in case law or in logic. Claim 1 stands rejected under § 101 as ineligible for claiming unpatentable subject matter, not for lack of utility. The method claims of *Mayo* and *Ariosa* were apparently also useful, and also invalid. Utility is not the test for patent-eligible subject matter.

Genetic Techs. Ltd. v. Merial L.L.C., 818 F.3d 1369, 1380 (Fed. Cir. 2016)(citations omitted).

"That the automation can 'result in life altering consequences,' is laudable, but it does not render it any less abstract." *Univ. of Fla. Research Found., Inc. v. Gen. Elec. Co.,* 916 F.3d 1363, 1369 (Fed. Cir. 2019)

We are not persuaded by Appellant's argument that "the claimed aspects provide an improvement to the technical field of determining a parameter of a moving object, including providing the advantages discussed above, via the executing the series of process "rules" or steps as defined by the claims and paraphrased above." Reply Br. 4. This repeats the argument

supra concerning the claim being directed to determining a parameter of a moving object, and is equally unpersuasive here. Simply reciting the functional result of adapting data and determining a parameter is not a recitation of technological rules implementations.

We are not persuaded by Appellant's argument that the claims would not preempt the idea. Reply Br. 4–5. "Where a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* [*/Alice*] framework, as they are in this case, preemption concerns are fully addressed and made moot." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.,* 788 F.3d 1371, 1379 (Fed. Cir. 2015).

We are not persuaded by Appellant's argument that the claims are analogous to claim 6 in *In re Abele*, 684 F.2d 902 (CCPA 1982). Reply Br. 6. *Abele's* claim 6 displayed an image of the inside of a computed tomography target. The instant claims display nothing, but only select some parameter, which is a conceptual idea.

CONCLUSIONS OF LAW

The rejection of claims 1–20 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

CONCLUSION

The rejection of claims 1–20 is affirmed.

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–20	101	Eligibility	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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED