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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY LEE MCLAREN, WILLIAM DYER RODES II, and
JOHN MALCOLM TOUPS

Appeal 2018-007899
Application 12/789,858¹
Technology Center 3600

Before MICHAEL W. KIM, MURRIEL E. CRAWFORD, and
JOSEPH A. FISCHETTI, *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 1–5 and 7–24. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Medaxion, LLC as the real party in interest. App. Br. 2.

THE INVENTION

Appellant states “[t]he present invention relates generally to managing medical data, and more specifically to managing medical case and chronology information for one or more medical practices.” Spec. ¶ 2.

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A handheld apparatus comprising:
 - a user interface comprising a display and capable of receiving user input;
 - a wireless network interface capable of coupling to a central medical information management system, the central medical information management system maintaining a plurality of case chronology templates, each of the case chronology templates corresponding to a particular one of a plurality of medical treatment facilities and defining a series of anesthesiology-related medical events customized for the particular facility, and a plurality of patient treatment records for patients receiving care at the medical treatment facilities, each of the patient treatment records linked to one of the medical treatment facilities and corresponding to a patient treatment record having a time record associated with each of the anesthesiology-related medical events defined by the case chronology template corresponding to the facility;
 - a memory maintaining a medical information management application; and
 - a processor operable, when executing the medical information management application, to:
 - query the central medical information management system, using a selected one of the medical treatment facilities, to retrieve a case chronology template corresponding to the selected medical treatment facility;
 - retrieve a list of patient treatment records that correspond to the selected facility;
 - query the central medical information management system for a selected one of the patient treatment records based on user input;

retrieve a patient treatment record corresponding to the selected patient treatment record from the medical information management system;

display the anesthesiology-related medical events defined by the case chronology template corresponding to the selected facility and, for each of the anesthesiology-related medical events, a current value of the time record associated with the medical event as indicated by the received patient treatment record;

determine a need for a time update indicating a time for a selected one of the anesthesiology-related medical events for the received patient treatment record;

determine a current time as the indicated time for the selected anesthesiology-related medical event;

update the medical information management system to indicate the current time as the time update for the selected anesthesiology-related medical event;

retrieve updated information for the received patient treatment record from the medical information management system, the updated information incorporating the time update; and

update the display of the anesthesiology-related medical events to reflect the updated information.

THE REJECTION

The following rejection is before us for review:

Claims 1–5 and 7–24 are rejected under 35 U.S.C. § 101.

FINDINGS OF FACT

We adopt the Examiner's findings, as set forth on pages 3–6 in the Final Office Action² and on pages 2–3 in the Examiner's Answer, concerning only the 35 U.S.C. § 101 rejection.

² All references to the Final Office Action refer to the Final Office Action mailed on March 8, 2017.

ANALYSIS

35 U.S.C. § 101 REJECTION

We will affirm the rejection of claims 1–5, and 7–27 under 35 U.S.C. § 101.

The Appellant argues claims 1–5, and 7–27 as a group. (Appeal Br. 8). We select claim 1 as the representative claim for this group, and so the remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

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. 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.*

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”).³ “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, 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) (“Step 2A, Prong One”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).⁴

³ In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance. USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

⁴ This evaluation is performed by (a) identifying whether there are any

Guidance, 84 Fed. Reg. at 52–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, under Step 2B, 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.

Guidance, 84 Fed. Reg. at 52–56. 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

additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance - Section III(A)(2), 84 Fed. Reg. 54–55.

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:

Practice data represents practice wide settings and preferences corresponding to a medical practice and, potentially, for one or more specific practice locations. This may include rules and policies for managing medical data instituted by a particular medical practice. Practice data may also include a core set or subset of medical procedure terminology for a medical practice or procedure. Such medical procedure terminology may conform to Current Procedural Terminology (CPT) or International Classification of Diseases (ICD) codes. Such codes may be used in conjunction with recording billing-related events for a particular practice. Practice data may also include information related to historic utilization and appropriate future allocation of medical professional resources available to the practice. Other information included in practice data may include billing report preferences, billing export preferences, and any translation or transmission settings necessary to communicate various reports to the defined medical practice at a particular location. This information facilitates the generation of billing reports and invoices in the desired format for a practice.

Spec. ¶ 61.

Location data includes information corresponding to a defined practice location, either tied to a particular medical practice at that location or based on rules of information about multiple medical practices that may provide care at that location. Location data may include case chronology templates, checklist templates, quality control templates (such as a physician quality reporting incentives (PQRI) template), and other templates for capturing information in a form customized to a particular practice location or practice location / medical practice specified manner. These templates facilitate the recording of medical events occurring in the field, in addition to facilitating

the real-time tracking of quality control measures. For example, a case chronology template may define a set of rules regarding entry of medical events associated with a procedure and include time events or other entries. Case chronology templates may be manually and/or dynamically adjusted based on operations at one or more practice locations, such as based on feedback showing a particular event that consistently must be manually entered at a particular practice location.

Spec. ¶ 62.

Rules data defines permitted or prohibited activities corresponding generally to users, medical professional roles, specific medical practices, locations, medical procedures, or other activities. For example, these rules may implement practice-specific or location-specific policies affecting medical professionals or relevant medical events. For example, a rule for an anesthesia practice may prohibit an anesthesiologist from managing more than four CRNAs. Thus these rules provide guidelines for active case management in terms of a workflow that can be specific to a medical specialty or a medical facility.

Spec. ¶ 63.

Claim 1 recites, in pertinent part:

. . . maintaining a plurality of case chronology templates, each of the case chronology templates corresponding to a particular one of a plurality of medical treatment facilities and defining a series of anesthesiology-related medical events customized for the particular facility, and a plurality of patient treatment records for patients receiving care at the medical treatment facilities, each of the patient treatment records linked to one of the medical treatment facilities and corresponding to a patient treatment record having a time record associated with each of the anesthesiology related medical events defined by the case chronology template corresponding to the facility; . . .; and . . . executing . . . to:

query the central medical information management system, using a selected one of the medical treatment facilities, to retrieve a case chronology template corresponding to the

selected medical treatment facility; retrieve a list of patient treatment records that correspond to the selected facility; query for a selected one of the patient treatment records based on user input; retrieve a patient treatment record corresponding to the selected patient treatment record; display the anesthesiology-related medical events defined by the case chronology template corresponding to the selected facility and, for each of the anesthesiology-related medical events, a current value of the time record associated with the medical event as indicated by the received patient treatment record; determine a need for a time update indicating a time for a selected one of the anesthesiology-related medical events for the received patient treatment record; determine a current time as the indicated time for the selected anesthesiology related medical event;

update . . . to indicate the current time as the time update for the selected anesthesiology-related medical event;

retrieve updated information for the received patient treatment record from the medical information management system, the updated information incorporating the time update; and

update the display of the anesthesiology-related medical events to reflect the updated information.

The Examiner found claim 1 recites elements “similar to the abstract idea of using categories to organize, store and transmit information because the claims define organizing templates based on the medical facility and then transmitting the appropriate selected patient record based on both the appropriate template in conjunction with the medical facility.” (Final Act. 3).

Based on this intrinsic evidence and findings, we find that the claims recite a mental process because claim 1 recites steps that can be performed practically in the human mind, and that, relatedly, are perceptible only in the human mind, such as, “retriev[ing] a list of patient treatment records that

correspond to the selected facility;” “query[ing] . . . for a selected one of the patient treatment records based on user input;” “retriev[ing] a patient treatment record corresponding to the selected patient treatment record . . . ;” “determin[ing] a need for a time update indicating a time for a selected one of the anesthesiology-related medical events for the received patient treatment record;” “determin[ing] a current time as the indicated time for the selected anesthesiology related medical event;” updating . . . to indicate the current time as the time update for the selected anesthesiology-related medical event;” “retriev[ing] updated information for the received patient treatment record . . . , the updated information incorporating the time update.”

The Federal Circuit has held similar concepts to be mental processes. For example, the Federal Circuit has held that mental processes can include the concepts of collecting data, analyzing the data, and reporting the results of the collection and analysis, including when limited to particular content. *See, e.g., Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (identifying claims for collecting, displaying, and manipulating data as patent ineligible); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as mental processes within the realm of abstract ideas); *see also SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018)

Turning to the second prong of the “directed to” test, claim 1 only generically requires “a wireless network interface,” “a memory,” and “a processor.” These components are described in the specification at a high level of generality. *See* Spec. ¶¶ 24–36, Figs. 1–4. 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.

As to the claim limitations reciting displaying of data, e.g., “display the anesthesiology-related medical events,” and “update the display of the anesthesiology-related medical events to reflect the updated information,” these limitations are extra/post solution activities. Limitations of displaying the results of an analysis is simply outputting the results of the analyses, a post-solution activity. *See id.*; *Bilski*, 561 U.S. at 610–11 (“Flook stands for the proposition that the prohibition against patenting abstract ideas ‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant post solution activity.’”) (*quoting Diehr*, 450 U.S. at 191–92); *Electric Power*, 830 F.3d at 1354.

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 anesthesiology-related medical events, 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 a judicial exception, 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 Collaborative Servs.*, 566 U.S. at 72–73).

Concerning this step the Examiner found the following:

The claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements amount to no more than generic computer components that serve to merely link the abstract idea to a particular technological environment (i.e., a user interface, a wireless network interface, a memory, a processor) performing routine and conventional activities that are well-understood in the healthcare industry. Accordingly these elements are insufficient to amount to significantly more than the abstract ideas themselves.

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 the process is purely conventional. Using a computer to query, retrieve, display, determine, update and apply decision criteria to data, and modify the same, 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., LLC v. Alstom S.A.*, 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.*, ¶¶ 24–36, Figs. 1–4). 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 225–226.

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 (query, retrieve, query, retrieve, display, determine, update, retrieve and update data) and storing 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, as claimed, recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that recited 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 recited 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 that the Appellant have submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. (App. Br. 8–15, Reply Br. 2–6). 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.

Citing to *See Trading Techs. Int'l, Inc. v. CQG, INC.*, 675 Fed. App'x 1001, 1004 (Fed. Cir. 2017), Appellant argues:

Specifically, the pending claims are directed to specific and unconventional systems and methods of managing medical case and chronology data. The unconventional systems and methods described in the specification, to which the pending claims are directed, are improvements to conventional systems and methods of managing medical case and chronology data.

(Appeal Br. 9).

As explained in the specification, updating a patient treatment record in this manner may reduce transcription errors and/or cause facilitate streamlined access to medical case information and real-time tracking of specific cases. See *id.* at ¶¶ 0094, 0104, 0108. Thus, pending Claim 1 is directed to an

improvement in the field of managing medical case and chronology data.

(*Id.* at 10).

We are unpersuaded because improvements to methods of managing medical case and chronology data are improvements to the mental processes of collecting data, analyzing the data, and reporting the results of the collection and analysis, including when limited to particular content, that is, the alleged improvement lies in the abstract idea itself, not to any technological improvement. *See BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1287–88 (Fed. Cir. 2018). Although the claims purport to efficiently facilitate the necessary redacting of data, 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).

Also, the Appellant’s argument that the process involves “real-time tracking of specific cases” (Appeal Br. 10) fails from the outset because the recitation, “real-time tracking of specific cases,” does not appear in the claims.

Similarly, Appellant also argues,

Claim 1 describes a medical information management application having a particular interface structure, wherein each interface is associated with prescribed functionality (e.g., the interface comprising time records for each anesthesiology-related medical event is configured to update a current time as the indicated time for a selected anesthesiology-related medical event).

(Appeal Br. 10).

We disagree with the Appellant. First, a review of the language of claim 1 reveals that the “wireless network interface” is recited only functionally, i.e., being “capable of receiving user input.” After that, there is no mention in claim 1 of the wireless network interface again and/or of its functioning within the remaining aspects of the claim. Assuming that Appellant means it is the generically recited “processor” whose functions effect the recited, “retrieve updated information” and “update the display” (Claim 1), we fail to see how using a processor, to perform these most basic control functions, is anything other than “an idea that has long existed.” (Appeal Br. 10, *citing Trading Technologies Int'l, Inc.*, 675 Fed.Appx. at 1004.).

The *Trading Technologies* court was clear to distinguish the advancement in technology made by the claimed GUI from an abstraction, stating:

the challenged patents do not simply claim displaying information on a graphical user interface. The claims require a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface’s structure that is addressed to and resolves a specifically identified problem in the prior state of the art. *Trading Technologies Int'l, Inc.*, 675 Fed. App’x 1001. By contrast, claim 1 before us here recites no such computer related specific features. At best, claim 1 only generically recites, “a wireless network interface,” “a memory,” and “a processor.” The processor at best performs the well known function of refreshing a display with updated data. We find no indication in the Specification, nor does Appellant direct us to any indication, that this operation recited in independent claim 1 invokes any 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.”). The claim simply recites functional results to be achieved by any means. *See, e.g., Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014).

Appellant lists various limitations of claim 9 (Appeal Br. 12–13) as examples of items that are significantly more than “using categories to organize, store, and transmit information” without providing evidence or persuasive argument that they are improvements in the computer. First, Appellant’s mere restatement of the claim limitations on these pages does not constitute substantive argument. Notwithstanding, we note that although machine based entities are by definition in some sense technological, their use has become so notoriously settled that merely invoking them is no more than abstract conceptual advice to use well known technology for its intended purpose. *See In re TLI Commc’ns LLC Pat. Litig.*, 823 F.3d 607, 612–13 (Fed. Cir. 2016) (Using a generic telephone for its intended purpose was a well-established “basic concept” sufficient to fall under *Alice* step 1). The claim simply recites functional results to be achieved by any means. *See, e.g., Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d at 1347.

We also note that the claim features that Appellant identifies as unconventional limitations on pages 12–13 of the Appeal Brief still make up

the abstract idea itself, i.e., “querying the medical information management system for a selected one of the patient treatment records based on user input;” “retrieving a patient treatment record corresponding to the selected patient treatment record from the medical information management system;” “determining a need for input of a time update indicating a time for a selected one of the anesthesiology-related medical events for the received patient treatment record;” and “determining a current time as the indicated time for the selected anesthesiology-related medical event.” These are features of the mental process and thus cannot constitute the “inventive concept,” absent recitation of element which account for significantly more than the abstract idea.” *Berkheimer v. HP, Inc.*, 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring) (“It is clear from *Mayo* that the ‘inventive concept’ cannot be the abstract idea itself, and *Berkheimer* . . . leave[s] untouched the numerous cases from this court which have held claims ineligible because the only alleged ‘inventive concept’ is the abstract idea.”); *see also BSG Tech. LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”).

Appellant next argues, “the pending claims amount to significantly more than an abstract idea because the claims recite an inventive concept.” (Appeal Br. 13).

Although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “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*, 573 U.S. at 217–218. Appellant provides no evidence or persuasive argument to the contrary.

Appellant argues that “the Examiner has failed to meet his initial burden of showing that the claims are patent ineligible,” asserting that the Examiner has determined claim limitations or concepts to be abstract that have not been held by the courts as such. (Appeal Br. 14–15). Those arguments are unpersuasive for the reasons set forth above.

With respect to any “initial burden,” all that is required, as the statute itself instructs, is that 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. 3.

Specifically, in rejecting the pending claims under § 101, the Examiner notified the Appellant that the claims are similar to those claims directed to “using categories to organize, store and transmit information” that were determined to be mental processes (Final Act. 3), and that “[t]he claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception.” (*Id.*) Thus, we find that a *prima facie* case was established by the Examiner.

Appellant’s other arguments, including those directed to now-superseded USPTO guidance, have been considered, but are not persuasive

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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.”))).

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1–5 and 7–24 under 35 U.S.C. § 101.

DECISION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 7–24	101	Eligibility	1–5, 7–24	

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