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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RUTH E. SKOCIC

Appeal 2018-008630
Application 13/531,888
Technology Center 3600

Before JAMES R. HUGHES, LINZY T. McCARTNEY, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision rejecting claims 21–28, 30–38, 41, and 47–53. Claims 1–20, 29, 39, 40, and 42–46 have been canceled. *See* Final Act. 1–2; Appeal Br. 2.² We have jurisdiction under 35 U.S.C. § 6(b).

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a) (2015). Appellant identifies the real party in interest as MLP Technology, Inc. Appeal Br. 2.

² We refer to Appellant's Specification (“Spec.”), filed June 25, 2012 (claiming benefit of US 12/204,560 (filed Sept. 4, 2008), US 11/962,267 (filed Dec. 21, 2007), US 11/592,913 (filed Nov. 6, 2006), and US 60/876,048 (filed Dec. 21, 2006)); Appeal Brief (“Appeal Br.”), filed Nov. 25, 2015; Supplemental Appeal Brief (“Supp. Appeal Br.”), filed

We AFFIRM.

CLAIMED SUBJECT MATTER

The invention relates generally “to health care data management,” and more specifically, systems and methods utilizing “a biometric identifier of a patient to access . . . patient information” “including health information.” Spec. ¶ 5; *see* Spec. ¶¶ 5–8; Abstract. Claims 21, 38, and 51 are independent. Claim 21, reproduced below, is illustrative of the claimed subject matter:

21. A system for providing health care data to a caregiver, the system including:

- at least one biometric reader;
- a data communication interface;
- an output device;

a processor device, operatively coupled to the at least one biometric reader, the communication interface, and the output device; and

at least one computer storage medium, the at least one computer storage medium storing data instructions, wherein the data instructions are executable by the processor device to:

[A] identify a caregiver based on a biometric identifier of the caregiver received via the at least one biometric reader;

[B] identify the patient based on a biometric identifier of the patient received via the at least one biometric reader;

[C] access a health care information database and health care information of the patient contained therein via the data

Apr. 12, 2016; and Reply Brief (“Reply Br.”), filed May 21, 2018. We also refer to the Examiner’s Final Office Action (“Final Act.”), mailed May 29, 2015; and Answer (“Ans.”) mailed Nov. 7, 2017.

communication interface based on the patient's biometric identifier; and

[D] provide the accessed health care information to the caregiver via the output device upon identifying both the caregiver and the patient.

Supp. Appeal Br. 5 (Claims App.) (bracketed claim limitation designations added).³

REFERENCES

The prior art relied upon by the Examiner as evidence is:

Name	Reference	Date
Lancelot et al. ("Lancelot")	US 6,434,531 B1	Aug. 13, 2002
Otworth et al. ("Otworth")	US 2002/0059030 A1	May 16, 2002
Yellin et al. ("Yellin")	US 2005/0125258 A1	June 9, 2005
Winkler et al. ("Winkler")	US 2006/0164259 A1	July 27, 2006
Hekmatpour et al. ("Hekmatpour")	US 2007/0279187 A1	Dec. 6, 2007 (claiming benefit to US 60/791,490 filed Apr. 12, 2006)

³ Appellant filed a Supplemental Appeal Brief (on Apr. 12, 2016) including the Claim Appendix and Summary of Claimed Subject Matter.

REJECTIONS⁴

1. The Examiner rejects claims 25, 48, and 52 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Final Act. 2–4.⁵

2. The Examiner rejects claims 21–28, 30–38, 41, and 47–53 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 4–5.

3. The Examiner rejects claims 21, 26–28, 38, 41, 47, 49, 51, and 53 under 35 U.S.C. § 103(a) as being unpatentable over Yellin and Otworth. Final Act. 5–10.

4. The Examiner rejects claims 22–24 under 35 U.S.C. § 103(a) as being unpatentable over Yellin, Otworth, and Lancelot. Final Act. 10–11

5. The Examiner rejects claims 25, 48, 50, and 52 under 35 U.S.C. § 103(a) as being unpatentable over Yellin, Otworth, and Hekmatpour. Final Act. 10–14.

6. The Examiner rejects claims 30–37 under 35 U.S.C. § 103(a) as being unpatentable over Yellin, Otworth, and Winkler. Final Act. 15.

⁴ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284 (2011), amended 35 U.S.C. §§ 103 and 112, e.g., to rename 35 U.S.C. §§ 103 and 112’s subsections. Because the present application has an effective filing date prior to the AIA’s effective date for applications, this decision refers to the pre-AIA versions of 35 U.S.C. §§ 103 and 112, i.e., § 103(a) and § 112, first paragraph.

⁵ Appellant does not address the Examiner’s written description rejection. Appellant, instead, states the rejection “will be addressed after the present appeal process has completed.” Appeal Br. 3. Accordingly, we summarily affirm the uncontested written description (§ 112) rejection.

ANALYSIS

Subject Matter Eligibility—35 U.S.C. § 101

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. 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)).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77–80 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217. The framework requires us first to consider “whether the claims at issue are directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “the elements of [the] 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.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79). That is, we examine the claim for an “inventive concept,” “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 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Patent Office has published revised guidance concerning this framework and the application of § 101. USPTO’s 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “2019 Revised Guidance”). Under that guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, mental processes, or certain methods of organizing human activity such as a fundamental economic practice or managing personal behavior or relationships or interactions between people) (hereinafter “Step 2A, prong 1”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (hereinafter “Step 2A, prong 2”).⁶

See 2019 Revised Guidance, 84 Fed. Reg. at 51–52, 55.

A claim that integrates a judicial exception into a practical application applies, relies on, or uses 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. *See* 2019 Revised Guidance, 84 Fed. Reg. at 54. When the judicial exception is so integrated, then the claim is not directed to a judicial exception and is patent eligible under 35 U.S.C. § 101. *See* 2019 Revised Guidance, 84 Fed. Reg. at 54.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then evaluate

⁶ All references to the MPEP are to the Ninth Edition, Revision 08-2017 (rev. Jan. 2018).

whether the claim provides an inventive concept. *See* 2019 Revised Guidance 84 Fed. Reg. at 56; *Alice*, 573 U.S. at 217–18.

For example, we look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.⁷

See 2019 Revised Guidance, 84 Fed. Reg. at 56. With these principles in mind, we turn to the merits of the § 101 rejection. The Examiner rejects Appellant’s claims 21–28, 30–38, 41, and 47–53 as being directed to patent-ineligible subject matter. *See* Final Act. 4–5; Ans. 3–4. Appellant does not separately argue the claims with specificity and, instead, argues the claims together for this rejection. *See* Appeal Br. 7. Accordingly, we address the Examiner’s rejection of independent claim 21 and the claims not separately argued by Appellant as a group based on claim 21, as permitted by 37 C.F.R. § 41.37(c)(1)(iv).

Statutory Subject Matter

Claim 21 recites a “system” (*infra*). Appellant’s “system” uses a processor device coupled to at least one biometric reader, a communication interface, an output device, and at least one computer storage medium that stores data instructions executable by the processor device to implement a number of functions. *See* claim 21 (Supp. Appeal Br. 5 (Claims App.)).

⁷ Items (3) and (4) are collectively referred to as “Step 2B” hereinafter and in the 2019 Revised Guidance.

Accordingly, we analyze Appellant’s system as a process, which is a statutory category of invention (subject matter) (USPTO’s Step 1).

Abstract Idea

The Examiner rejects Appellant’s claim 21 as being directed to patent-ineligible subject matter. *See* Final Act. 4–5; Ans. 3–4. Specifically, the Examiner concludes “the claimed invention is directed to a judicial exception (. . . an abstract idea) without significantly more” and claim 21 (and the other pending claims) is “directed to ‘identifying a provider and a patient via a biometric identifier and providing the accessed health care information to the caregiver via an output device upon identifying both the caregiver and the patient.’” Final Act. 4 (quoting claim 21). The Examiner also concludes the claim is drawn to “‘using categories to organize, store, and transmit information’ [(similar to *Cyberfone*)] and ‘comparing new and stored information and using rules to identify options’ [(similar to *SmartGene*),] which the courts have considered to fall within the judicial exceptions, e.g., as abstract ideas.” Final Act. 4 (quoting *Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App’x 988, 992 (Fed. Cir. 2014) and *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x 950, 955 (Fed. Cir. 2014)); *see* Final Act. 4–5; Ans. 3–4. The Examiner further explains that claim 21 is drawn to “an idea of itself” similar to *Cyberfone* and *SmartGene*, which amount to mental processes similar to *Electric Power Group*—“collect[ing] information, analyzing it and displaying certain results of the collection and analysis.” Ans. 3 (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)).

Appellant contends the Examiner erred in rejecting the claims as being directed to patent-ineligible subject matter. *See* Appeal Br. 3–7; Reply

Br. 2–3. Specifically, Appellant contends, with respect to the first step of the *Alice* analysis, that the Examiner improperly interpreted the claims (in particular claim 21) (*see* Appeal Br. 6–7), that the claims (in particular claim 21) “do not embody an abstract idea” (Appeal Br. 7), and the claims do not preempt “accessing health information based on an identified provider and patient” (Appeal Br. 6). *See* Appeal Br. 3–7; Reply Br. 2–3. Appellant further contends the claims (in particular claim 21) embody a technical improvement—“the present invention . . . provides a technological solution to providing medical authentication” (Reply Br. 2) and “the present claims are directed to an improvement of existing technologies” (Reply Br. 3). *See* Appeal Br. 7; Reply Br. 2–3. Appellant also contends claim 21 is (and the other pending claims are) similar to the “patent eligible subject matter” in *DDR Holdings (DDR Holdings, LLC v. Hotels.com, L.P., 773 F.3d 1245 (Fed. Cir. 2014))*. Appeal Br. 7.

For the reasons discussed below, we conclude Appellant’s claim 21 (and the other pending claims) recites abstract ideas, these abstract ideas are not integrated into a practical application, nor do they include an inventive concept. In view of the 2019 Revised Guidance, we clarify and expand the Examiner’s reasoning as follows.

We begin our analysis by broadly but reasonably construing Appellant’s claim 21 (*see* Supp. Appeal Br. 5 (Claims App.)). Claim 21 recites “[a] system for providing health care data to a caregiver” including “at least one biometric reader,” “a data communication interface,” and “an output device.” Claim 21 also recites “a processor device . . . coupled to the . . . biometric reader, the communication interface, and the output device.” Claim 21 further recites “at least one computer storage medium” “storing

data instructions . . . [that] are executable by the processor device” to perform a number of functions. In other words, claim 21 recites a system including a processor device executing software to manage health care data access. *See* Spec. ¶¶ 5–6. This is consistent with Applicant’s description of the system—“this disclosure is directed to health care data management” (Spec. ¶ 5), in particular, a “health care data management system . . . [that] operate[s] to provide quick and convenient access to patient data [], while protecting the privacy of patient data [] from unauthorized access” (Spec. ¶ 36).

The system recited in claim 21 includes non-abstract elements (physical structure), including a processor device coupled to at least one biometric reader, a communication interface, an output device, and at least one computer storage medium that stores data instructions executable by the processor device. These non-abstract elements, in particular the processor device, perform a health care data management process (function) to “identify a caregiver based on a biometric identifier of the caregiver received via the at least one biometric reader” (Limitation A), “identify the patient based on a biometric identifier of the patient received via the at least one biometric reader” (Limitation B), “access a health care information database and health care information of the patient contained therein . . . based on the patient’s biometric identifier” by means of “the data communication interface” (Limitation C), and “provide the accessed health care information to the caregiver . . . upon identifying both the caregiver and the patient” by means of “the output device” (Limitation D). That is, identifying a caregiver using data—a biometric identifier—and identifying a patient using data—a biometric identifier—received from a biometric reader, accessing data—the

patient's healthcare information in a health care information database—utilizing a data communication interface, and providing (outputting) data—the patient's health care information—to a caregiver utilizing an output device based on the identifications. *See* Spec. ¶¶ 35–36, 40, 45, 48, 68–69, 72, 74; Figs. 1, 5.

In summary, claim 21 recites a system including a processor device and user interfaces for identifying a patient and caregiver, accessing patient healthcare data, and providing the healthcare data to a caregiver. Hereinafter, we refer to this process as the “health care data management process.”

Appellant's contentions (*supra*) focus on the Examiner's purported improper interpretation of the claims (in particular claim 21). *See* Appeal Br. 6–7. Here, in rejecting the claims (in particular claim 21) under 35 U.S.C. § 101, the Examiner analyzed the claims using the *Mayo/Alice* two-step framework, consistent with the guidance set forth in the USPTO's “2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (Dec. 16, 2014), in effect at the time the rejection was made on May 29, 2015. The Examiner notified Appellant of the reasons for the rejection “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of . . . [the] application.” 35 U.S.C. § 132. *See* Final Act. 4–5. In doing so, the Examiner set forth a *prima facie* case of unpatentability such that the burden of production shifted to Appellant to demonstrate that the claims are patent eligible.

Appellant also contends the at-issue claims are not abstract and that the claims (in particular claim 21) demonstrate a technical improvement.

See Appeal Br. 7; Reply Br. 2–3. Claim 21, however, recites no substantive limitations on how the health care data management process exchanges data (except that the exchanges occur via interfaces), identifies the patient and caregiver, or what the biometric data from the biometric reader (from the interface) entails. The limitations are entirely functional in nature, or characterize various data (e.g., biometric data received from the biometric reader, which is an interface) utilized in Limitations A–D. The recited system devices (e.g., the processor device and biometric reader) are additional elements that are not part of the abstract idea analysis.

Although Appellant contends the claims describe purported technological improvements or advances provided by health care data management process, claim 21 (and the other pending claims) does not explicitly recite any specific improvements to technology, i.e., the system performing any improved processing or analysis. Claim 21, instead, simply recites exchanging data and identifying a patient and caregiver to access a patient’s healthcare information.

A person can practically perform the function of Limitations A–D mentally, or by using pen and paper. Nowhere does Appellant point to specific claim limitations that distinguish over a human process. Further, the revised guidance explains that “mental processes” include acts that people can perform in their minds or using pen and paper, even if the claim recites that a generic computer component performs the acts. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52 n.14 (“If a claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation of generic computer components, then it is still in the mental processes category unless the claim cannot practically be performed in the mind.”)

Because each of the limitations discussed above encompasses an act that people can perform in their minds or using pen and paper, claim 21 recites mental processes. Appellant's arguments have not persuaded us otherwise.

To the extent Appellant argues utilizing devices (e.g., the processor device and biometric reader) to perform the recited functionality is not abstract, Appellant misconstrues the inquiry. As we explained *supra*, the devices are additional elements that are not part of this part of the abstract idea analysis. The relevant inquiry is whether the processes (functionality) recited in the claims (in particular claim 21) are abstract.

We construe claim 21 as reciting exchanging data and identifying a patient and caregiver to access a patient's healthcare information. Claims that recite performing information analysis (e.g., user identification and controlling accessing to healthcare related information), as well as the collection and exchange of information related to such analysis, have been determined by our reviewing court to be an abstract concept that is not patent eligible. *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093 (Fed. Cir. 2016) (Claims reciting "analyzing data . . . including user identifier data" to determine improper access to patient health information were "drawn to the concept of analyzing records of human activity to detect suspicious behavior," which is an abstract mental process.); *Prism Techs. LLC v. T-Mobile USA, Inc.*, 696 F. App'x 1014, 1017 (Fed. Cir. 2017) ("providing restricted access to resources"); *see also Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (identifying the abstract idea of collecting, displaying, and manipulating data); *Elec. Power Grp.*, 830 F.3d at 1354 (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 matters within the realm of abstract ideas); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1345, 1347 (Fed. Cir. 2014) (finding the “claims generally recite . . . extracting data . . . [and] recognizing specific information from the extracted data” and that the “claims are drawn to the basic concept of data recognition”); *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”). Indeed, even if the analysis requires one to access and gather data from a database or memory, or utilize a pen and paper in the analysis, such analysis may still be an abstract mental process. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011) (“[E]ven if some physical steps are required to obtain information from the database . . . such data-gathering steps cannot alone confer patentability.” A claim focused on verifying credit card transaction information is directed to “unpatentable mental processes” because the claim’s steps “can be performed in the human mind, or by a human using a pen and paper.”).

In summary, we conclude Appellant’s claim 21 recites a judicial exception (USPTO’s Step 2A, Prong 1; *see* 2019 Revised Guidance). Specifically, claim 21 recites a process for managing access to healthcare information—the healthcare data management process—by exchanging data to identify a patient and caregiver in order to access a patient’s healthcare information and provide the patient’s healthcare information to a caregiver

as discussed *supra*. The healthcare data management process consists of methods of organizing human activity and mental processes that can be practically performed in the human mind (or utilizing pen and paper) including observation, evaluation, or judgment. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52, 53 (listing “[m]ental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion)” as one of the “enumerated groupings of abstract ideas” (footnote omitted)).

Practical Application

We next consider whether claim 21 integrates the abstract idea into a practical application (USPTO’s Step 2A, Prong 2). *See* 2019 Revised Guidance, 84 Fed. Reg. at 51. In doing so, we evaluate the claim as a whole to determine whether the claim “integrate[s] the [abstract idea] into a practical application, using one or more of the considerations laid out by the Supreme Court and the Federal Circuit.” 2019 Revised Guidance, 84 Fed. Reg. at 55; *see also* October 2019 Update: Subject Matter Eligibility 12 (discussing the practical application analysis), available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf (hereinafter “October SME Update”). That is, we consider any additional elements recited in the claim along with the limitations that recite an abstract idea to determine whether the claim integrates the abstract idea into a practical application. *See* October SME Update 12.

Claim 21 recites additional elements beyond the abstract healthcare data management process (the judicial exception). The additional elements in claim 21 include the processor device coupled to the biometric reader, the

communication interface, the output device, and the computer storage medium that stores data instructions executable by the processor device. *See* Appeal Br. 4, 6; Spec.

Appellant’s Specification describes “an exemplary health care data management system” including a “server” and “hospital computing system,” as well as “[b]iometric readers.” Spec. ¶ 35; *see* Fig. 1. The Specification describes the system operation, wherein a “biometric reader [] is used to read a biometric identifier of the patient (such as the patient’s fingerprint)” and the “health records associated with the patient’s fingerprint are then obtained from server 102.” Spec. ¶ 36. Appellant’s Specification describes the biometric reader at a high level of generality as a fingerprint scanner, a digital imager, or any of a variety of devices. *See* Spec. ¶ 44. Similarly, Appellant’s Specification describes the server at a high level of generality as including a “processing device,” “a storage device,” “a communication device,” “an input device,” and “an output device.” Spec. ¶ 49; *see* Fig. 2. In particular, the Specification describes the processing device—recited as the “processor device” in claim 21—as “a microprocessor” or alternatively “various other processing devices . . . including central processing units” (i.e., CPUs), “microcontrollers, . . . and the like.” Spec. ¶ 51. The Specification similarly describes the other enumerated additional elements at a high level of generality, e.g., the “communication interface” (a communication device—*see* Spec. ¶ 56), the “output device” (e.g., a display— *see* Spec. ¶ 57), and the “computer storage medium” (computer storage media—*see* Spec. ¶ 54).

In summary, Appellant’s written description does not portray the processor device, biometric reader, or other enumerated additional elements

as anything but standard computer components. Nor does Appellant’s written description portray these components as operating in a new way. Instead the written description depicts these components as generic components operating in their accustomed manner.

Accordingly, Appellant’s written description shows that additional elements are generic. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986) (“[A] patent need not teach, and preferably omits, what is well known in the art.”); *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1331 (Fed. Cir. 2017) (“The claimed mobile interface is so lacking in implementation details that it amounts to merely a generic component (software, hardware, or firmware) that permits the performance of the abstract idea, i.e., to retrieve the user-specific resources.”).

Appellant contends claim 21 (and the other pending claims) provides a technical improvement similar to the claims in *DDR Holdings*. *See* Appeal Br. 7; Reply Br. 2–3. In other words, Appellant contends the claims recite a technological improvement that amounts to more than simply utilizing a computer as a tool to accomplish the healthcare data management process.

Appellant’s contentions correspond to the reasoning in MPEP § 2106.05(a)–(c), where additional elements integrate the judicial exception into a practical application. We, however, disagree with Appellant’s contentions. Appellant’s additional elements do not apply or use the healthcare data management process (the judicial exception) in a manner that imposes a meaningful limit on the judicial exception, such that it is more than a drafting effort designed to monopolize the exception. *See Alice*, 573 U.S. at 221–24 (citing *Mayo*, 566 U.S. at 78–85). Rather, Appellant’s

claim recites generic computer elements (e.g., the processor device) that are utilized as tools to carry out the exchange of data and information analysis to identify the identify the patient and the caregiver in order to access the patient's healthcare information and provide the caregiver with the patient's healthcare information as discussed *supra*. Utilizing computers as tools to perform common data information analysis and data exchange functions that can be mental processes (an abstract idea) does not impose a meaningful limit on the abstract idea. *See* MPEP § 2106.05(f); *see also Alice*, 573 U.S. at 223 (finding “if [the] recitation of a computer amounts to a mere instruction to implement an abstract idea on a computer that addition cannot impart patent eligibility” (quotations and internal citations omitted)).

Appellant's claim 21 (and the other pending claims) can be distinguished from patent-eligible claims such as those in *McRO*, *Enfish*, *BASCOM*, and *DDR Holdings* that are directed to “a specific means or method that improves the relevant technology” (*McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016)), or “a specific improvement to the way computers operate” (*Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016)), solving a technology-based problem (*BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016)), or a method “rooted in computer technology in order to overcome a problem specifically arising in the realm of computer [technology]” (*DDR Holdings*, 773 F.3d at 1257). Contrary to Appellant's arguments, claim 21 is not a technological improvement or an improvement in a technology. Appellant's claim 21 does not “improve the functioning of the computer itself” or “any other technology or technical field.” *Alice*, 573 U.S. at 225. Nor does it provide a

technological solution to a technological problem. *See DDR Holdings*, 773 F.3d at 1257; MPEP § 2106.05(a). Appellant fails to explain sufficiently and persuasively how the instant claim(s) are directed to an improvement in the way computers operate, nor has Appellant identified any technical advance or improvement or specialized computer components. *See Appeal Br. 7; Reply Br. 3–4.*

As discussed *supra*, nothing in claim 21 precludes a human from performing the healthcare data management process. Performing such information processing functionality is the reason computers exist. The mere automation of a process that can be performed by a human is not sufficient to show an improvement in computer functionality, and the fact that a computer may increase efficiency—be more efficient by reducing the difficulty of complying with regulations concerning or overcoming problems “associated with otherwise normal telecommunication information transfer where additional legal protections exist that provide[] medical data and information privacy, security and protection.” Reply Br. 2–3; *see Spec. ¶ 36*—does not change the abstract-idea analysis. *See Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (holding that “merely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (“[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible”); *see also FairWarning*, 839 F.3d at 1095.

In summary, “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.” *Elec. Power Grp.*, 830 F.3d at 1354; *see also* MPEP § 2106.05(f) (emphasis omitted) (instructing Examiners to consider “[w]hether the claim invokes computers or other machinery merely as a tool to perform an existing process” in determining whether the claim recites mere instructions to apply the exception), cited in 2019 Revised Guidance, 84 Fed. Reg. at 55, n.30. Thus, we conclude the claims are directed to an abstract idea that is not integrated into a practical application.

Inventive Concept

Having concluded Appellant’s claims are directed to an abstract idea under the 2019 Revised Guidance (Step 2A analysis), we consider whether claim 21 has an inventive concept, that is, whether the claim has additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79). As discussed above, this requires us to evaluate whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” 2019 Revised Guidance, 84 Fed. Reg. at 56.

The Examiner determined that Appellant’s claim 21 (and the other pending claims) “do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements or combination of elements” “amount to no more than a generic computer structure that [performs] generic computer functions . . . as shown in Fig. 1 of Applicant’s drawings” and the “claimed functions are well understood, routine, and conventional activities previously known to

the pertinent industry (i.e. receiving, comparing, communication, and modifying data).” Final Act. 4–5; *see* Ans. 3–4.

Appellant, does explicitly address the second step of the *Alice* analysis, but contends claim 21 (and the other pending claims) recites additional elements (*see* Appeal Br. 4) and “claim 21 recites significantly more than identifying a provider and a patient, then accessing a health information database” (Appeal Br. 6). Appellant also contends claim 21 is similar to the claims in *DDR Holdings*. *See* Appeal Br. 7. Appellant fails to persuade us of error in the Examiner’s rejection with respect to the second *Alice* step (USPTO’s Step 2B). We agree with the Examiner that Appellant’s claim 21 (and the other pending claims) does not evince an “inventive concept” that is significantly more than the abstract idea itself. In particular, Appellant fails to explain how the additional elements (above) add specific limitations beyond the judicial exception that are not well-understood, routine, and conventional in the field.

As previously discussed, claim 21 (and the other pending claims) merely recites additional non-abstract elements (above) that perform the healthcare data management process. We conclude that these additional elements, individually and as an ordered combination, are generic computer components that carry out common information exchange and analysis functions recited in the healthcare data management process (the abstract idea). *See, e.g.*, Spec. ¶¶ 35, 44, 49, 51, 54, 56, 57. Such conventional computer processes operating on conventional computer hardware “do not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning*, 839 F.3d at 1096 (citing *DDR Holdings*, 773 F.3d at 1256).

For at least the reasons above, we are not persuaded of Examiner error in the rejection of claim 21 under 35 U.S.C. § 101. Thus, we sustain the Examiner’s rejection under § 101 of independent claim 21, independent claims 38 and 41, and dependent claims 22–28, 30–37, and 47–53, which depend from claims 21 and 38, respectively, and which were not separately argued with specificity.

Obviousness Rejections of Claims 21, 26–28, 38, 41, 47, 49, 51, and 53

Appellant argues independent claim 21, independent claims 38 and 41, and dependent claims 26–28, 47, 49, 51, and 53, together as a group with respect to the 35 U.S.C. § 103 rejection. *See* Appeal Br. 8–10. We select independent claim 21 as representative of Appellant’s arguments with respect to claims 21, 26–28, 38, 41, 47, 49, 51, and 53. 37 C.F.R. § 41.37(c)(1)(iv).

Appellant contends “Yellin fails to disclose identifying a caregiver based on a biometric identifier of the caregiver received via [the] biometric reader, and providing accessed health care information to the caregiver via the output device upon identifying both the caregiver and a patient” (Appeal Br. 8 (emphasis omitted)) and “Otworth fails to teach providing health care information to a caregiver” (Appeal Br. 9 (emphasis omitted)) and, therefore, “does not teach providing accessed health care information to a caregiver via an output device upon identifying both the caregiver and the patient” (Appeal Br. 10 (emphasis omitted)). *See* Appeal Br. 8–10.

The Examiner rejects claims 21, 26–28, 38, 41, 47, 49, 51, and 53 over Yellin and Otworth. *See* Final Act. 5–10. Specifically, with respect to claim 21 (*see* Final Act. 5–8), the Examiner explains that Yellin teaches the features of claim 21, except ““identify[ing] a caregiver based on a biometric

identifier of the caregiver received via the at least one biometric reader’ and ‘provid[ing] the accessed health care information to the caregiver via the output device upon identifying both the caregiver and the patient’” (Final Act 6–7), but Otworth teaches these features in combination with Yellin. *See* Final Act. 6–8; Ans. 4–6 (citing Otworth ¶¶ 92, 95, 133, 168).

We agree with the Examiner that the combination of Yellin and Otworth would have taught or at least suggested the disputed limitations of “identify[ing] a caregiver based on a biometric identifier [from] the . . . biometric reader” and “provid[ing] the . . . health care information to the caregiver via the output device upon identifying both the caregiver and the patient.” Supp. Appeal Br. 5 (Claims App.).

It is not disputed that Yellin teaches identifying a patient based on biometric identification or accessing patient healthcare information based upon such an identification. *See* Yellin ¶¶ 9, 21, 27–30. Otworth, in turn describes a healthcare provider (i.e., caregiver) providing a unique identifier (Otworth ¶ 92), biometric identification of a healthcare provider (Otworth ¶¶ 95, 133), and a healthcare provider querying (accessing) patient records (Otworth ¶ 168). Otworth and Yellin both describe accessing patient healthcare information based on authentication/ identification (*supra*). Accordingly, Yellin in combination with Otworth would have at least suggested to one having ordinary skill in the art identifying a caregiver based on a biometric identifier from a biometric reader and providing health care information to a caregiver from an output device based on authenticating/identifying both a caregiver and a patient.

Here, Appellant argues the references individually and does not address the specific arguments set out by the Examiner. The references cited

by the Examiner must be read, not in isolation, but for what each fairly teaches in combination with the prior art as a whole. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references). Further, Appellant does not address the Examiner's responsive findings and conclusions (*see* Ans. 4–6) in Appellant's Reply Brief.

Accordingly, Appellant's contentions do not persuade us of error in the Examiner's obviousness rejection of representative independent claim 21. Therefore, we affirm the Examiner's rejection of representative claim 21, independent claims 38 and 41, and dependent claims 26–28, 47, 49, 51, and 53, not separately argued with particularity (*supra*).

Obviousness Rejection of Claims 25, 30–37, 48, 50, and 52

The Examiner rejects claims 22–24 over Yellin, Otworth, and Lancelot. *See* Final Act. 10–11. The Examiner also rejects claims 25, 48, 50, and 52 over Yellin, Otworth, and Hekmatpour. *See* Final Act. 10–14. The Examiner further rejects claims 30–37 over Yellin, Otworth, and Winkler. *See* Final Act. 15. Appellant contends Lancelot does not cure the deficiencies of Yellin and Otworth. *See* Appeal Br. 11. Appellant makes similar argument with respect to Hekmatpour (*see* Appeal Br. 11) and Winkler (*see* Appeal Br. 12). Thus, we conclude Appellant does not provide substantive specific arguments with respect to these claims or the additional references (Lancelot, Hekmatpour, and Winkler). *See* Appeal Br. 10–12.

For the same reasons as claim 21 (*supra*), we agree with the Examiner that Appellant does not persuade us of error in the Examiner's obviousness

rejection of claims 22–24 over Yellin, Otworth, and Lancelot; the Examiner’s obviousness rejection of claims 25, 48, 50, and 52 over Yellin, Otworth, and Hekmatpour; and the Examiner’s obviousness rejection of claims 30–37 over Yellin, Otworth, and Winkler. *See* Final Act. 10–15. Therefore, we affirm the Examiner’s obviousness rejections of claims 25, 30–37, 48, 50, and 52.

CONCLUSION

For the reasons discussed above, we determine that claims 21–28, 30–38, 41, and 47–53 are directed to an abstract idea and do not demonstrate an inventive concept. We also determine that claims 21–28, 30–38, 41, and 47–53 are obvious in view of the cited prior art.

Appellant has not shown that the Examiner erred in rejecting claims 21–28, 30–38, 41, and 47–53 under 35 U.S.C. § 101. Appellant has also not shown that the Examiner erred in rejecting claims 21–28, 30–38, 41, and 47–53 under 35 U.S.C. § 103(a). Further, Appellant has not shown that the Examiner erred in rejecting claims 25, 48, and 52 under 35 U.S.C. § 112, first paragraph. We therefore sustain the Examiner’s rejection of claims 21–28, 30–38, 41, and 47–53.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
25, 48, 52	112, first paragraph	Written Description	25, 48, 52	
21–28, 30–38, 41, 47–53	101	Patent-Eligible Subject Matter	21–28, 30–38, 41, 47–53	
21, 26–28, 38, 41, 47, 49, 51, 53	103(a)	Yellin, Otworth	21, 26–28, 38, 41, 47, 49, 51, 53	
22–24	103(a)	Yellin, Otworth, Lancelot	22–24	
25, 48, 50, 52	103(a)	Yellin, Otworth, Hekmatpour	25, 48, 50, 52	
30–37	103(a)	Yellin, Otworth, Winkler	30–37	
Overall Outcome			21–28, 30–38, 41, 47–53	

TIME PERIOD FOR RESPONSE

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).

AFFIRMED