UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte JOHN S. CONTI KILMER,
WILLIAM D'ALELIO,
JEFF HAYES, and ANDREW RAMSEY

_____

Appeal 2018-008730
Application 14/625,430
Technology Center 3700

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Before CHARLES N. GREENHUT, MICHAEL L. HOELTER, and
JAMES P. CALVE, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the
Examiner's decision to reject claims 1–4 and 6–22 (i.e., all the claims on
appeal).[1] We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

The disclosed subject matter "relates to software and a method for
remote assessment of the emotional status of a patient by a psychological or

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[1] We use the word "Appellant" to refer to "applicant" as defined in
37 C.F.R. § 1.42. Appellant identifies "Future Life, Inc." as the real party in
interest. Appeal Br. 1.

psychiatric therapist." Spec. ¶ 1. Computer system claim 1 and method claim 17 are independent. Claim 1 is illustrative of the claims on appeal and is reproduced below:

> 1. A computer system, comprising:
>   a patient's computer and a remotely-located therapist's computer;
>   software installed in said patient's computer encoding steps for execution by said patient's computer to provide an interactive, real-time computer-to-computer link for remote communication between said patient's computer and said therapist's computer, said software comprising:
>   instructions for establishing two-way audio/visual communication between said patient's computer and said therapist's computer;
>   an emotional recognition algorithm including steps for facial motion amplification correlated with changes in facial structures and movements over time for recognizing said patient's emotional state, and
>   instructions for transmitting data generated by the emotional recognition algorithm indicating the patient's emotional state over said computer-to-computer link to the therapist's computer.

REJECTIONS[2]

Claims 1–4 and 6–22 are rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement.

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[2] The Examiner states, "[t]he following grounds of rejection," i.e., "[c]laims 1–4 and 6–22 rejected under 35 USC [§] 103," "are not presented for review on appeal because they have been withdrawn by the [E]xaminer." Ans. 8.

Claims 1–4 and 6–16 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. [3]

ANALYSIS

The rejection of claims 1–4 and 6–22
as failing to comply with the written description requirement.

The Examiner addresses the limitation "an emotional recognition algorithm" that is recited in both independent claims. Final Act. 2. The Examiner finds that these limitations were "not described in the [S]pecification in such a way as to reasonably convey to one skilled in the relevant art that the inventor[s] . . . had possession of the claimed invention." Final Act. 3. The Examiner acknowledges Appellant's reliance on paragraphs 44–46 of Appellant's Specification for support, but finds that these paragraphs "only broadly describe[] what the algorithm is intended to achieve, without any detail of the steps of the algorithm which are performed in order to achieve this outcome." Final Act. 3. Indeed "[c]laiming all [subject matter] that achieve[s] a result without defining what means will do so is not in compliance with the description requirement; it is an attempt to preempt the future before it has arrived." *Fiers v. Revel,* 984 F. 2d 1164, 1171 (Fed. Cir. 1993). The Examiner has carried the initial burden of pointing out why persons skilled in the art would not recognize in the disclosure a description of the full scope of the claimed invention because the claims so broadly encompass any and all software capable of achieving

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[3] The Examiner includes claim 5 in this listing, but claim 5 has been canceled. *See* Amendment dated March 29, 2017.

the results recited. Because Appellant is in the best position to apprise us of error in the Examiner's findings in this regard, by pointing to the Specification or providing other evidence, the burden shifts to Appellant to show how the Specification demonstrates Appellant was in position of the subject matter sought to be patented. *In re Wertheim*, 541 F. 2d 257 (CCPA 1976) (cited at MPEP § 2163.04).

Paragraph 44 of Appellant's Specification describes how the present invention makes use of "facial motion amplification (FMA)" by which a digital camera "picks up slight facial motions which allows [a] therapist to be able to better diagnose a patient." Spec. ¶ 44. Paragraph 45 describes how "FMA is an imaging algorithm" that "reveal[s] how movement of facial structures change over very small amounts of time." Paragraph 46 addresses therapy sessions that "capture and stor[e] real-time audio, video, and processed data associated with algorithms for biofeedback, cross-correlation with FMA data captured in order to achieve emotional reading." Paragraph 46 continues stating that "[a]dditional algorithms can be applied to measure physiological details of the patient: respiratory, heart rate, blood flow, etc."

Appellant additionally references paragraphs 47–49 stating that these paragraphs "further describe how the data recorded by FMA is correlated with emotions." Appeal Br. 9. These additional paragraphs provide background information stating, for example, that "[m]uch research and development has been undertaken in the past several decades" and that Messrs. Ekman and Friesen "developed the original FACS [Facial Action Coding System] in the 1970s." Spec. ¶¶ 47, 48. Paragraph 49 states, "the present invention has been developed to digitally detect facial changes over time and correlate them with emotions from real-time video data."

Appellant further acknowledges "that FMA was known in the art at the time of filing of the present application." Reply Br. 4.

The paragraphs discussed above are the only paragraphs cited by Appellant in Appellant's effort do show that the Specification demonstrates Appellant was, at the time of filing, in possession of the subject matter for which patent protection is sought. In view of the above disclosures, we agree with the Examiner's assessment that these paragraphs "only broadly describe[] what the algorithm is intended to achieve." Final Act. 3. Appellant, on the other hand, justifies reliance on the above paragraphs by replicating a passage from MPEP § 2163A, which states:

> where software constitutes part of a best mode of carrying out an invention, description of such a best mode is satisfied by a disclosure of the functions of the software. This is because, normally, writing code for such software is within the skill of the art, not requiring undue experimentation, once its functions have been disclosed . . . Thus, flow charts or source code listings are not a requirement for adequately disclosing the functions of software.

Appeal Br. 8 (emphasis omitted). The above MPEP passage addresses "a best mode of carrying out an invention." Appellant seems to overlook that this passage is preceded by the word "compare." To be clear, MPEP § 2163, as a whole, is directed to satisfying the written description requirement,[4] and the above passage was provided in this MPEP section as a comparison to the requirements for satisfaction of the best mode requirement. Thus, because the Examiner's rejection is based on a lack of written description support, and not a failure to convey a "best mode of carrying out an invention,"

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[4] MPEP § 2163 is entitled "Guidelines for the Examination of Patent Applications Under the 35 U.S.C. 112(a) or Pre-AIA 35 U.S.C. 112, first paragraph, 'Written Description' Requirement."

Appellant's reliance on this passage is misplaced.[5] *See* Final Act. 2–3; *see also* Appeal Br. 8.

The proper legal standard to apply in this situation are discussed in MPEP § 2161.01 which is entitled "Computer Programming, Computer Implemented Inventions, and 35 U.S.C. 112(a) or Pre-AIA 35 U.S.C. 112, First Paragraph." Sub-section "I" thereof addresses how to determine whether there is adequate written description support for computer-implemented functional claim limitation. As expressed therein, "[t]he purpose of [the written description requirement] is to ensure that the scope of the right to exclude, as set forth in the claims, does not overreach the scope of the inventor's contribution to the field of art as described in the patent Specification." *Reiffin v. Microsoft Corp.*, 214 F.3d 1342, 1345 (Fed. Cir. 2000); *see also Rivera v. Int'l Trade Comm'n*, 857 F.3d 1315, 1319–21 (Fed. Cir. 2017) (Affirming the Commission's findings that "the [S]pecification did not provide the necessary written description support for the full breadth of the asserted claims."). We have also been provided guidance that "[t]he description requirement of the patent statute requires a description of an invention, not an indication of a result that one might achieve if one made that invention."[6] *Regents of the Univ. of California v. Eli Lilly & Co.*, 119 F.3d 1559, 1568 (Fed. Cir. 1997).

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[5] Appellant contends, "[t]he Examiner fails to comment on Appellant's arguments as to the relevance of MPEP 2163 A, quoted at page 8 of the Appeal Brief." Reply Br. 3. However, we see no need for the Examiner to do so because this quote was taken out of context as discussed above.
[6] As a side-note, the Federal Circuit has explained that a specification cannot always support expansive claim language and satisfy the requirements of 35 U.S.C. § 112 "merely by clearly describing one embodiment of the thing claimed" and that "the description of one method

MPEP § 2161.01(I) states:

> original claims may lack written description when the claims
> define the invention in functional language specifying a desired
> result but the [S]pecification does not sufficiently describe how
> the function is performed or the result is achieved. For software,
> this can occur when the algorithm or steps/procedure for
> performing the computer function are not explained at all or are
> not explained in sufficient detail (simply restating the function
> recited in the claim is not necessarily sufficient). In other words,
> the algorithm or steps/procedure taken to perform the function
> must be described with sufficient detail so that one of ordinary
> skill in the art would understand how the inventor intended the
> function to be performed. *S*ee MPEP §§ 2163.02 and 2181,
> subsection IV.

That is the situation we have here, i.e., Appellant is seeking approval

of claims reciting "an emotional recognition algorithm including steps for

facial recognition" but provides no example or explanation of the particular

steps or process the algorithm is to follow, or the procedure by which it is to

operate. An express listing of computer source code may not be required but

Appellant's Specification must provide a detailed enough algorithm to

explain "how the inventor[s] intended the function to be performed." MPEP

§ 2161.01(I). Appellant has not apprised us as to where the Specification or

Figures disclose such subject matter commensurate with the scope of this

claim limitation.

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for creating a seamless DWT does not entitle the inventor . . . to claim any
and all means for achieving that objective." *LizardTech Inc. v. Earth
Resource Mapping, Inc.*, 424 F.3d 1336, 1346 (Fed. Cir. 2005). Here,
however, Appellant does not point to even one embodiment in Appellant's
Specification as an example of the manner or outline by which the algorithm
is to be prepared.

We thus agree with the Examiner that, on the record before us, Appellant's Specification "only broadly describes what the algorithm is intended to achieve, without any detail of the steps of the algorithm." Final Act. 3. Appellant's contention that "things which are well-known to the skilled artisan need not be disclosed in detail" is not supported by any evidence demonstrating that, at the time of filing, writing computer code to recognize a person's facial movements and correlate them with a patient's emotional state was well-known in the art. Appeal Br. 10, 12[7]; *see also* Reply Br. 4 ("[T]hose skilled in the art were able to write the computer code necessary to accomplish the method and product of the present claims."). For a skilled artisan to proceed, direction and guidance must first be provided either in the knowledge generally available to the skilled artisan or based on teachings from Appellant's Specification. As noted above, the identified passages in Appellant's Specification explain what is to be accomplished, but lack detail as to how it is to be achieved, e.g., what steps for facial motion amplification are to be used in the emotional recognition algorithm? Leaving such decisions of design and methodology for the skilled worker to resolve is no indication that Appellant fully possessed that which is claimed, namely, "an emotional recognition algorithm including steps for facial motion amplification." *See* Appeal Br. 11.

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[7] Appellant states, "the Examiner is correct that the programming code had not yet been completed at the time of filing of the present application" but "that writing of the code constitutes an act within the skill in the art." Appeal Br. 12. However, nowhere in Appellant's Specification does Appellant identify the steps, phases, or sequences the code is to follow.

Accordingly, and based on the record presented, we sustain the Examiner's rejection of claims 1–4 and 6–22 due to the limitation "an emotional recognition algorithm" lacking written description support.

The rejection of claims 1–4 and 6–16
as directed to a judicial exception without significantly more

Background

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: i.e., "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *See, e.g.*, *Alice Corp. Pty. Ltd. 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 Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012) and in *Alice*. *See Alice*, 573 U.S. at 217–18. In accordance with that framework, we first determine what concept the claim is "directed to." *See Alice*, 573 U.S. 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, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as "molding rubber products" (*Diamond v. Diehr*, 450 U.S. 175, 192 (1981)); "tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores" (*id.* at 184 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)).

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. "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].'"[8] *Id.* (quoting *Mayo*, 566 U.S. at 77). This is the "significantly more" the Examiner refers to. Final Act. 7 ("The claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception.").

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[8] The USPTO has published revised guidance on the application of § 101. *See* USPTO's January 7, 2019, Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019), and supplemented at 84 Fed. Reg. 55942 (Oct. 18, 2019) ("Office Guidance"). Regarding this Office Guidance, our reviewing court stated, "the Office Guidance is not, itself, the law of patent eligibility, does not carry the force of law, and is not binding in our patent eligibility analysis." *In re Rudy*, 956 F.3d 1379, 1383 (Fed. Cir. 2020): *see also In re Zach Zunshine*, No. 2020-1254, 2020 WL 3816803, at *2 (Fed. Cir. July 8, 2020) (Addressing "the Office Guidance, which we recently reiterated does not modify or supplant controlling case law.").

Discussion

Appellant argues claims 1–4 and 6–16 (i.e., the "computer system" claims) together. *See* Appeal Br. 7–9. The Examiner does not reject method claims 17–22 under Section 101. We select claim 1 for review, with claims 2–4 and 6–16 standing or falling with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

(1) Does Claim 1 fall within a Statutory Category of § 101?

As an initial matter, we must first ascertain whether claim 1 recites one of the enumerated statutory classes of subject matter that is eligible under 35 U.S.C. § 101, namely, a process, machine, manufacture, or composition of matter. The Examiner does not indicate or suggest that claim 1 fails to fall within one of these named categories. Accordingly, we resolve this question in the affirmative, i.e., claim 1 does fall within a statutory category of Section 101, namely, a machine.

(2) Is Claim 1 Directed to a Judicial Exception?

The Examiner finds claim 1 "directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea)" and more specifically, that claim 1 is "directed to an abstract idea"—the "emotional recognition algorithm," And the software for establishment of a two way communication link and transmission of data is directed to insignificant extra-solution activity. Final Act. 7. Appellant acknowledges that the "*Alice/Mayo* test" is to be followed, but "traverse[s] the Examiner's finding that claim 1 is only directed to an abstract idea." Appeal Br. 5. This is because, as per Appellant, "[c]laim 1, when considered as a whole, is directed to a computer system" with linking, assessment, and signaling

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capabilities (via the claimed software). Appeal Br. 5. Appellant's argument in this regard is addressing the so-called "additional elements" of claim 1 relating to, as will be discussed below, insignificant extra-solution activity, but this argument does not explain why the "emotional recognition algorithm" is not the underlying subject matter to which the claim is truly direct or why it is not an "abstract idea." Final Act. 7; Ans. 9.

Our discussion above concerning the lack of written description support for the claim term "emotional recognition algorithm," lends credence to the Examiner's ephemeral or conceptual findings regarding the nature of Appellant's recited algorithm. Lacking any discussion by Appellant to the contrary on the topic of whether or not the algorithm itself is "abstract," we agree with the Examiner that claim 1, as a whole, is "directed to an abstract idea." Final Act. 7; *see also* Ans. 8–9 ("[T]he abstract idea is the emotional recognition algorithm."). Thus, we are not persuaded the Examiner erred in ascertaining claim 1 as being "directed to a judicial exception." Final Act. 7. Accordingly, we resolve this question in the affirmative, i.e., claim 1 recites a judicial exception, which the Revised Guidance enumerates as mathematical concepts—mathematical formulas or equations. *See* Office Guidance, 84 Fed. Reg. at 52.

(3) Has the Judicial Exception/Abstract Idea Been Integrated Into A Practical Application, and, if so, Does Claim 1 Contain an Inventive

Concept Sufficient to Transform the Judicial Exception/Abstract Idea Into a Patent-Eligible Application? [9]

As instructed above, if a claim is "directed to" an abstract idea, we are then informed by the Supreme Court to "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 (characterized as "*Mayo* step two"). In the matter before us, the Examiner finds that claim 1 does "not include additional elements that are sufficient to amount to significantly more than the judicial exception." Final Act. 7. The Examiner explains that "software for establishment of a two way communication link and transmission of data is directed to insignificant extra-solution activity (data gathering and transmitting)." Final Act. 7.

Appellant argues "that the Examiner's contentions lack factual support, as is now required by *Berkheimer v. HP, Inc.*, [890 F.3d 1369] (Fed. Cir. 2018)." Appeal Br. 4. Appellant contends that "<u>when considered as a whole</u>," claim 1 is directed to linking, assessment and signaling via a computer system, and provides unclaimed benefits when doing so. Appeal Br. 5. Thus, because of the better capability of the computer system, as compared to a therapist that might miss facial clues, Appellant contends "that when considered as a whole, claim 1 is hardly an abstract idea." Appeal Br. 6. To summarize, Appellant contends that the fact that: (a) "software is installed in the patient's computer;" (b) "the software contain[s]

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[9] The Office Guidance "explains that a patent claim or patent application claim that recites a judicial exception is not 'directed to' the judicial exception if the judicial exception is integrated into a practical application of the judicial exception." Office Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019).

an emotional recognition algorithm;" and (c) "instructions for transmitting data generated by the emotional recognition algorithm . . . over said computer-to-computer link to the therapist's computer, are sufficient to demonstrate that the claim is significantly more than merely a claim on an ineligible concept." Appeal Br. 6.

Appellant further emphasizes that the claim element requiring the software installed on the patient's computer to contain an emotional recognition algorithm "is important because it specifies that the patient's facial movements are assessed over a period of time, enhanced by facial motion amplification (FMA), and correlated to the patient's emotional state." Appeal Br. 7. Additionally, the claim element regarding instructions for transmitting data generated by the emotional recognition algorithm "is important because the software enables the therapist to evaluate the patient's emotional state in essentially real-time, enhanced by signals and/or alerts sent over the computer-to-computer link." Appeal Br. 7.

The Examiner, however, responds to the above arguments, premised on guidance from *Berkheimer*, "that the rejection is not based upon well-understood, routine, conventional activity rationale and thus [*Berkheimer*] is not applicable to the current rejection." Ans. 9. Instead, as per the Examiner, "[t]he examiner has considered the claim as a whole and the examiner appreciates the benefits provided by the intended use of the invention." Ans. 9. However, "the establishment of the link and the transmission of the data is directed to insignificant extra-solution activity, as this merely allows for the output of the emotional recognition algorithm." Ans. 9. In other words, "the abstract idea is the emotional recognition

algorithm specifically, and the other steps are insignificant extra-solution activity." Ans. 9. As support, the Examiner states:

> [t]he claims relate for example to classifying and storing digital images in an organized manner as described in *TLI Communications*, 823 F.3d at 611–12, 118 USPQ2d at 1747. Also, collecting information, analyzing it, and displaying certain results of the collection and analysis as described in *Electric Power Group, LLC v. Alstom, S.A.*, 830 F.3d 1350, 1355, 119 USPQ2d 1739, 1742 (Fed. Cir. 2016).

Ans. 10.

Appellant replies that "[t]he Examiner's response is merely to disagree with Appellant's arguments set forth in the Appeal Brief, without specific comment as to Appellant's detailed discussion as to why the claims meet the requirements of the *Alice* test." Reply Br. 2. However, from the above analysis of the matter before us, the Examiner has followed the "*Alice* test" and has focused on the lack of extra-solution activity recited in these claims. Appellant disagrees with this assessment, but does not explain how the remainder of claim 1 recites more than insignificant extra-solution activity so as to warrant reversal of the Examiner's findings. *See* Office Guidance, 84 Fed. Reg. at 55 & n. 31 (additional elements that add only insignificant extra-solution activity such as data gathering) are not sufficient to integrate an abstract idea into a practical application).

Regardless, Appellant argues that the emotional recognition algorithm facilitates the remote delivery of therapy by a therapist who is located remotely from a patient. Appeal Br. 5. Therefore, the algorithm essentially duplicates the mental processes of observation, judgment, and opinion that a therapist would perform if present in the same room as the patient. However, merely using a generic computer device to perform generic

functions that replicate the mental processes of medical doctors recites an abstract idea implemented on generic hardware and software. *See SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App'x 950, 954–55 (Fed. Cir. 2014).

Given the absence of a written description of the purported advanced functionality of the claimed algorithm, Appellant's arguments that the emotional recognition algorithm can identify, record, and alert a therapist's computer to minor facial clues that might be missed by a therapist even in a face-to-face session is not commensurate with the scope of claim 1. Even if the Specification describes improvements to computers or software, those features are not recited in claim 1 and thus cannot effect an integration into a practical application. *See ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 769–70 (Fed. Cir. 2019); *Ericsson*, 955 F.3d 1317, 1325 (Fed. Cir. 2020) (holding that the specification must yield to the claim language when identifying the true focus of a claim); *Synopsys*, 839 F.3d at 1149 ("The § 101 inquiry must focus on the language of the Asserted Claims themselves."); *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) ("[T]he important inquiry for a § 101 analysis is to look to the claim.").

As indicated above, this *Alice* test regarding the recitation of additional elements, whether individually, or as an ordered combination (*see Alice*, 573 U.S. at 217–18), is satisfied when the claim limitations involve more than the performance of well-understood, routine, and conventional activities previously known to the industry. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1367 (Fed. Cir. 2018); *see also* Revised Guidance, 84 Fed. Reg. 56 (explaining that the *Alice* analysis considers whether a claim adds a

specific limitation beyond a judicial exception that is not "well-understood, routine, conventional" activity in the field).

Individually, the additional elements recited here perform the extra-solution activity of establishing communication between computers and transmitting data. As an ordered combination, the additional elements provide no more than when they are considered individually. *Alice*, 573 U.S. at 225. In other words, the additional elements relied upon by Appellant (*see above*) recite generic computers that perform generic functions of communicating with one another and transmitting data. They are used as tools to implement the judicial exception. *See SAP Am.*, 898 F.3d at 1169–70 (holding limitations of various databases and processors did not improve computers but used already available computers and available functions as tools to execute the claimed process).

Accordingly, and based on the record presented, we resolve the above questions in the negative, i.e., claim 1 <u>does not</u> integrate the judicial exception/abstract idea into a practical application and <u>does not</u> transform the judicial exception/abstract idea into a patent-eligible application. We determine claim 1 does not reflect an improvement in computer functions or other technology. It does not implement the judicial exception with or on a particular machine that is integral to the claim. It does not transform or reduce a particular article to a different state or thing, and it does not impose a meaningful limitation on the judicial exception. Office Guidance, 84 Fed. Reg. at 55. For example, as recited in claim 1, the emotional recognition algorithm merely replicates mental processes of a therapist in recognizing and assessing changes in facial structures and movements over time.

Consequently, we determine that claim 1 lacks an inventive concept sufficient to transform the abstract idea into patent eligible subject matter. Thus, we sustain the Examiner's rejection of claims 1–4 and 6–16 under 35 U.S.C. § 101.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–4, 6–22	112(a)	Written Description	1–4, 6–22	
1–4, 6–22	112(a)	Enablement	1–4, 6–22	
1–4, 6–16	101	Eligibility	1–4, 6–16	
Overall Outcome			1–4, 6–22	

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