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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TAIDO L. NAKAJIMA, BRYAN J. JAMES, and
BARKER N. BHASKARAN

Appeal 2018-009164¹
Application 14/670,846²
Technology Center 3700

Before MICHAEL C. ASTORINO, BRADLEY B. BAYAT, and
AMEE A. SHAH, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the decision rejecting claims 1–11, 13, 14, 16, 17, and 19–23, which are the only claims pending in the Application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our Decision references Appellants' Appeal Brief ("Br.," filed Feb. 5, 2018), the Examiner's Answer ("Ans.," mailed May 10, 2018), and Final Office Action ("Final Act.," mailed Sept. 21, 2017).

² According to Appellants, the real party in interest is Apple Inc. Br. 3.

STATEMENT OF THE CASE

Claimed Subject Matter

Appellants' invention "relates generally to personal fitness devices and in particular to a personal fitness device that provides wellness coaching." Spec. ¶ 2. Independent claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method of providing wellness coaching, the method comprising:
 - obtaining, by an electronic coaching system, baseline information about a user;
 - initializing, by the electronic coaching system, a personality profile for the user based at least in part on the baseline information;
 - receiving, at a host device of the electronic coaching system and from a wearable device, activity data that includes or that has been derived from sensor data collected via a sensor at the wearable device;
 - selecting, at the host device of the electronic coaching system, a wellness-related activity based at least in part on the activity data;
 - selecting, at the host device of the electronic coaching system, a prompt to the user to engage in the selected wellness-related activity, the prompt being selected based at least in part on the personality profile;
 - identifying a time for presentation of the selected prompt based on the personality profile of the user or electronic calendar data associated with the user; and
 - transmitting, from the host device to the wearable device, a communication that causes the selected prompt to be presented at the wearable device at the identified time.

Br. 11 (Claims Appendix).

Rejections

- I. Claims 21–23 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite.
- II. Claims 1–11, 13, 14, 16, 17, and 19–23 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.
- III. Claims 1–6, 13, 14, 16, 17, 19, and 20 are rejected as unpatentable under 35 U.S.C. § 103 over Schwarzberg et al., U.S. Patent Application Publication No. 2009/0076842 A1, published Mar. 19, 2009 (“Schwarzberg ’842”), Case, Jr. et al., U.S. 2006/0136173 A1, published June 22, 2006 (“Case”), and McGrath et al., U.S. 2012/0296191 A1, published Nov. 22, 2012 (“McGrath”).
- IV. Claims 7–9 and 21–23 are rejected as unpatentable under 35 U.S.C. § 103 over Schwarzberg ’842, Case, McGrath, and Haughay Jr., U.S. 2010/0197463 A1, published Aug. 5, 2010 (“Haughay”).
- V. Claims 10 and 11 are rejected as unpatentable under 35 U.S.C. § 103 over Schwarzberg ’842, Case, McGrath, and Schwarzberg et al., U.S. 2009/0076335 A1, published Mar. 19, 2009 (“Schwarzberg ’335”).

ANALYSIS

Rejection I

35 U.S.C. § 112, second paragraph

We are persuaded the Examiner erred in rejecting claims 21–23 as indefinite because “[i]t is unclear whether the recited ‘a time’ is intended to refer to the same time as the previously recited ‘the time’ or if it is a separate and distinct time.” Final Act. 2; Ans. 3.

Each of dependent claims 21 and 23 recite “wherein identifying the time for presentation of the selected prompt includes identifying a time during a period of the one or more periods of availability.” Br. 14, Claims App. Appellants argue:

This limitation is with reference to independent claim 14’s recitation of “a time for presentation of the selected prompt”, such that the article preceding the first “time” in the claim is chosen to be “the”. However, the second part of the claim is not referring to “the time *for presentation*” but is instead referring to “a time *during a period*”. Thus, the article of “a” is used in this context. We submit that this language is more clear [sic] than language indicating that “wherein identifying the time ... includes identifying the time” A similar rationale applies to claim 22’s “wherein identifying the time for presentation ... includes identifying a time preceding ... a period of the one or more periods of availability”.

Br. 6. The Examiner disagrees and asserts that

“a time during a period” could be interpreted in multiple ways: as the same time as “the time for presentation” or as a separate and different time. This renders the claim indefinite because it is unclear whether the step of “identifying the time for presentation” is identifying the time for presentation from the period of the one or more periods of availability or if the step is identifying a different time from the period of the one or more

periods of availability and somehow using that different time to identify the time for presentation.

Ans. 18. We agree with Appellants.

“The legal standard for definiteness is whether a claim reasonably apprises those of skill in the art of its scope.” *In re Warmerdam*, 33 F.3d 1354, 1361 (Fed. Cir. 1994) (citing *Amgen Inc. v. Chugai Pharma. Co.*, 927 F.2d 1200, 1217 (Fed. Cir. 1991)). The Examiner’s reasoning in support of the indefiniteness rejection fails to consider the language of the claims within the context of the claimed invention. The definiteness of the claim language employed must be analyzed not in a vacuum, but always in light of the Specification as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. *See In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971); *see also Power-One, Inc. v. Artesyn Techs., Inc.*, 599 F.3d 1343, 1350 (Fed. Cir. 2010).

There is no dispute that “identifying the time for presentation of the selected prompt” recited in dependent claims 21–23 provides proper antecedent basis as to independent claim 14’s recitation of “identifying a time for presentation of the selected prompt.” Br. 11, 14, Claims App. Claims 21 and 23 further define “identifying the time for presentation of the selected prompt includes *identifying a time during a period of the one more periods of availability*” (Br. 14 (emphasis added)), which the Specification describes as a time during a period of availability or a free block of time. Spec. ¶ 15. As for claim 22, which recites “identifying a time preceding,” the Specification provides: “If the user is known to be more responsive to prompts given well in advance, the prompt can be issued prior to the free block of time, for example, in the morning when the user first arrives at

work and is planning out her day.” *Id.* As such, we do not sustain the rejection of claims 21–23 as indefinite.

Rejection II

35 U.S.C. § 101

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. But the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]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, first described in *Mayo* and further clarified in *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). According to 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.”).

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 (citation 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.* (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.*

USPTO recently published revised guidance on the application of § 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under Step 2A Prong One, the Guidance extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract idea exception includes the following groupings of subject matter: (a) mathematical concepts, (b) certain methods of organizing human activity, and (c) mental processes. Guidance, 84 Fed. Reg. at 52. Under Step 2A Prong Two, the judicial exception (*i.e.*, an abstract idea) is evaluated for integration into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h)).³ *Id.* at 54. Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, under Step 2B of the Guidance, the Examiner looks 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.

³ We acknowledge that some of these considerations may be properly evaluated under Step 2 of *Alice* (Step 2B of Office guidance). Solely for purposes of maintaining consistent treatment within the Office, we evaluate it under Step 1 of *Alice* (Step 2A of Office guidance). *See* Guidance, 84 Fed. Reg. at 54–56.

Id. at 56.

Claims 1–11, 13, 14, 16, 17, 19, and 20

In contesting the rejection, Appellants argue claims 1–11, 13, 14, 16, 17, 19, and 20 together as a group. *See* Br. 6–7. We select claim 1 as the representative claim for the group; thus, claims 2–11, 13, 14, 16, 17, 19, and 20 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv). In their Appeal Brief, Appellants do not contest the Examiner’s characterization of the abstract idea.⁴ Instead, Appellants contend the present claims reflect “an ‘improved user interface for computing devices’ and ‘a particular manner of summarizing and presenting information in electronic devices’,” similar to *Core Wireless Licensing v. LG Elecs., Inc.*, 880 F.3d 1356 (Fed. Cir. 2018). Br. 7. For the following reasons, we are not persuaded by Appellants’ argument.

Alice Step 1

Does claim 1 recite a judicial exception?

Independent claim 1 recites “[a] method of providing wellness coaching . . . comprising” seven steps: (1) “obtaining . . . baseline information about a user;” (2) “initializing . . . a personality profile for the user based at least in part on the baseline information;” (3) “receiving . . . activity data;” (4) “selecting . . . a wellness-related activity based at least in part on the activity data;” (5) “selecting . . . a prompt to the user to engage in the selected wellness-related activity, the prompt being selected based at

⁴ *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (“If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.”).

least in part on the personality profile;” (6) “identifying a time for presentation of the selected prompt based on the personality profile of the user or calendar data associated with the user; and” (7) “transmitting . . . a communication that causes the selected prompt to be presented.” Br. 11, Claims App.

Under the broadest reasonable interpretation, the steps recited in claim 1 describe activities performed by a wellness coach or fitness trainer “to encourage a user to engage in various wellness activities such as exercising (walking, cycling, running, swimming, weightlifting, etc.), meditating, learning about healthy habits (e.g., food choices), and so on.” Spec. ¶ 4. For example, when a client hires a wellness coach to provide wellness coaching, the wellness coach initially asks the client to provide basic information (i.e., by filling out a questionnaire) such as age, height, weight, medical history, exercise habits, target goals, etc., which is reflected in step (1) recited above. *Cf.* Spec., Fig. 4 (example of the type of baseline data collected); ¶ 51 (“user can be prompted to enter basic information such as height, weight, gender, and age . . . fitness history . . . as well as information about general or specific goals the user might have”). Upon collecting the baseline information, the coach may use that information to create a personality profile for the client (recited in step (2)), which may for example indicate that the client prefers receiving phone calls for reminders/alerts during certain hours of the day (e.g. weekday mornings). *Cf.* Spec., Fig. 5 (example elements of a personality profile). Based on activities scheduled in a client’s daily calendar provided by the client (recited in step (3)), the wellness coach selects a wellness activity for the client (recited in step (4)), selects a message that communicates the selected

wellness activity (recited in step (5)), identifies a time to present the message based on the client profile preferences (recited in step (6)), and transmits the message to the client (recited in step (7)). *Cf.* Spec. ¶ 65 (“Activity data can also be gathered from other sources, such as a user’s calendar, which may indicate, e.g., when a wellness activity such as a workout or meditation is scheduled.”); ¶ 66 (“determine that the user should engage in a particular activity in the near future (e.g., walk around the block this afternoon).”). For instance, the wellness coach may determine from the client’s schedule that there is 30 minutes of free time between morning meetings, and makes a phone call to the client or leaves a voicemail at the beginning of the 30-minute period to encourage and motivate the client to take a walk around the block. As a whole, activities performed between a wellness coach and a client recited in steps (1) through (7) describe “managing personal behavior and relationships or interactions between people,” which falls within the Guidance’s “[c]ertain methods of organizing human activity” grouping, and, thus, recite an abstract idea. *Guidance*, 84 Fed. Reg. at 52.

The abstract idea here is not meaningfully different from the ideas found to be abstract in other cases before our reviewing courts involving methods of organizing human activity. In *Bilski*, the Supreme Court determined that a claim directed to a method of hedging risk was directed to an abstract idea. 561 U.S. at 599, 613. In *Alice*, the Supreme Court held that a computer based implementation of a method of mitigating settlement risk using a third-party intermediary was drawn to an abstract idea. 134 S. Ct. at 2351–52. In *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363 (Fed. Cir. 2015), the patentee claimed a system for providing web pages tailored to an individual user, comprising an interactive

interface having a display that depicts customized content based on (1) information known about the user and (2) navigation data. 792 F.3d. at 1369. In *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016), the court held that collecting information, analyzing it, and displaying certain results of the collection and analysis is patent ineligible. In light of these precedents, we conclude that claim 1 is equally drawn to an abstract idea.

Is claim 1 “directed to” the recited judicial exception?

Because claim 1 recites an abstract idea, we determine whether the recited judicial exception is integrated into a practical application. Guidance, 84 Fed. Reg. at 51. When a claim recites a judicial exception and fails to integrate the exception into a practical application, the claim is “directed to” the judicial exception. *Id.* The claim may integrate the judicial exception when, for example, it reflects an improvement to technology or a technical field. *Id.* at 55.

In that regard, Appellants argue that

the present claims are thus directed to an “improved user interface for computing devices” and “a particular manner of summarizing and presenting information in electronic devices.” Also, as in *Core Wireless*, the present claims indicate that a specific “limited set of data” is presented - here, a particular prompt (selected based on the profile) to engage in a particular wellness-related activity (selected based on the sensor data). Further, as in *Core Wireless*, the present claims identify specific presentation configurations. Specifically, a time for presentation of the prompt is to identified based on electronic calendar data.

Br. 7.

We are not persuaded by Appellants' argument that the claims in *Core Wireless* are similar to the claims before us here. For example, to the extent there is an improvement in claim 1, the improvement is to the abstract idea, and this improvement is implemented by processing with conventional computer equipment. The claims in *Core Wireless* are "directed to a particular manner of summarizing and presenting information in electronic devices," resulting in an improved user interface, whereas claim 1 does not recite a user interface. *See Core Wireless*, 880 F.3d at 1362. There, the court stated:

Claim 1 of the '476 patent requires "an application summary that can be reached directly from the menu," specifying a particular manner by which the summary window must be accessed. The claim further requires the application summary window list a limited set of data, "each of the data in the list being selectable to launch the respective application and enable the selected data to be seen within the respective application." This claim limitation restrains the type of data that can be displayed in the summary window. Finally, the claim recites that the summary window "is displayed while the one or more applications are in an un-launched state," a requirement that the device applications exist in a particular state. These limitations disclose a specific manner of displaying a limited set of information to the user, rather than using conventional user interface methods to display a generic index on a computer. Like the improved systems claimed in *Enfish*, *Thales*, *Visual Memory*, and *Finjan*, these claims recite a specific improvement over prior systems, resulting in an improved user interface for electronic devices.

Id. at 1362–63. In contrast, Appellants' claim is directed to a process that qualifies as an abstract idea of providing wellness coaching based on personality characteristics and activity of a user, for which computing devices are invoked merely as tools.

We agree with the Examiner that Appellants' claims involve the use of known display techniques (discussed at least in paragraphs 0016, 0020, 0030 of Appellant's specification: display, speakers, haptic devices used to output prompt with no discussion of how any of the outputs provides an improvement over conventional technology and no description of the particulars of the display devices being used) to provide data in the form of a "prompt" to a user (prompts are discussed in Appellant's specification as messages, see examples provided in paragraph 0014).

Ans. 20 (emphasis omitted).

Appellants also argue:

The claimed solutions improve the efficacy of the prompt for a particular user. Further, as disclosed in the present application, the claimed interoperation between the wearable device and the host device can enhance functionality (paragraph 24) and "reduce power consumption by the wearable device" (paragraph 98). For at least these reasons, the independent claims and claims dependent thereon are not directed to an abstract idea and are patent eligible.

Br. 7.

The Examiner responds:

Paragraphs 0024 and 0098 of Appellant's specification discuss pairing the host device and wearable device over a wireless communication technology "such as Bluetooth" and the use of each device to perform different computing steps and "different devices in a coaching system can implement different aspects of system operation". Examiner also notes that paragraph 0098 of Appellant's specification states that "other devices can be substituted and can implement similar functional blocks and/or algorithms".

Ans. 20–21.

We disagree with Appellants' argument that claim 1 reflects non-abstract improvements to computer technology. Indeed, there is a

fundamental difference between computer functionality improvements, on the one hand, and uses of existing computers as tools to perform a particular task, on the other. In *Enfish*,⁵ for example, the court noted that “[s]oftware can make non-abstract improvements to computer technology just as hardware improvements can.” *Enfish*, 822 F.3d at 1335. The court asked “whether the focus of the claims is on [a] specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Id.* at 1335–36. The court found that the “plain focus of the claims” there was on an improvement to computer functionality itself (a self-referential table for a computer database, designed to improve the way a computer carries out its basic functions of storing and retrieving data), not on a task for which a computer is used in its ordinary capacity. *Id.*

As the Examiner observes, paragraph 24 of the Specification merely indicates that the interoperability between a wearable device and host device can enhance functionality on the host device. Appellants have not offered any persuasive evidence or technical reasoning that this enhancement in functionality is reflected in the language of claim 1; rather, this alleged enhancement appears to be naturally derived from the interoperability of these two devices, which claim 1 recites at a high level of generality. And, the reduction in power consumption by the wearable device cited in paragraph 98 of the Specification reflects processing operations on the second device and merely providing instructions to the wearable device,

⁵ *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016).

such that processing operations are not performed on the wearable device, which reduces power consumption.

In *McRO* the court asked whether the claim as a whole “focus[es] on a specific means or method that improves the relevant technology” or is “directed to a result or effect that itself is the abstract idea and merely invoke[s] generic processes and machinery.” *McRO*, 837 F.3d at 1314–15 (Claims determined not abstract because they “focused on a specific asserted improvement in computer animation.”). The claims in *McRO* were directed to a system of lip synchronization and facial expressions of animated characters, and the court concluded that the computerized system in *McRO* operated by rules whose implementation was not previously available manually. *Id.* at 1316.

Here, in contrast to *McRO*, implementation was previously available and conducted, although without computer assistance. And, although “automated wellness coaching” is less time consuming and more efficient (Spec. ¶ 49 (“Thus, much like a human coach, an automated wellness coach provided by application 236 can adapt its coaching style over time toward an optimal style for a given user.”)), computer-based efficiency does not save an otherwise abstract method. *See Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1277–78 (Fed. Cir. 2012) (Performance by computer of operations that previously were performed manually or mentally, albeit less efficiently, does not convert a known abstract idea into eligible subject matter.). Unlike *Enfish* and *McRO*, we find the focus of the claim as a whole here is directed to a result or effect that itself is the abstract idea, because the claimed host and wearable devices (e.g., computer processors) are merely invoked as tools for automated

wellness coaching based on personality characteristics and activity of a user to encourage the user to develop habits that facilitate wellness. Spec. ¶ 49. Therefore, we determine that the claims do not “apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception,” i.e., the claims do not integrate the abstract idea into a practical application. *See* Guidance, 84 Fed. Reg. at 54.⁶

Alice Step 2

“Well-understood, routine, conventional activities?”

To determine whether a claim provides an inventive concept, the additional elements are considered—individually and in combination—to determine whether they (1) add a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field or (2) simply append 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 56.

In that regard, the Examiner asserts:

Considering all of the identified additional elements individually and in combination, the claim as a whole does not amount to significantly more than the abstract idea because the claimed additional limitation of the host device of the system consists of nothing more than a generic computer and the use of a generic computer to perform generic functions such as processing, transmitting, and receiving information in an abstract method. Generic computers performing generic

⁶ For purposes of maintaining consistent treatment within the Office, these considerations are made under Step 1 of *Alice* (Step 2A of Office guidance).

computer functions alone do not amount to significantly more than the abstract idea (*Alice Corp. v. CLS Bank Int'l*). The additional limitation of the sensor of the wearable device is only used in a step of mere data gathering which is insignificant extra solution activity which does not provide significantly more than the abstract idea. Displaying the prompt at the wearable device consists of the use of another generic computing element performing the generic computing step of displaying data which happens to be disposed in the wearable device. Wearable devices comprising sensors and computing elements consist of well-understood, routine, and conventional activities previously known in the field of user physiological data tracking and thus does not providing significantly more than the abstract idea. Furthermore, viewing each of these claim elements as an ordered combination fails to add anything that is not already apparent when viewing the limitations individually - the claim as a whole merely recites a method of using a sensor disposed in a wearable device to acquire data that is used in generic computing steps using a generic computer to generate a result for display on a generic computing element of the wearable device. This does not provide significantly more than the abstract idea for at least the reasons discussed above.

Final Act. 5.

Under the second step of the *Alice* and *Mayo* framework, we are not apprised of error in the Examiner's determination that the elements of the claim do not contain an "inventive concept" sufficient to "transform" the claimed abstract idea into a patent-eligible application. In the Appeal Brief, Appellants do not dispute these findings. As such, any basis for asserting error in this regard has been waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Thus, we are not persuaded of error in the Examiner's determination that claim 1 is directed to non-statutory subject matter. Accordingly, we

sustain the rejection of independent claim 1 under 35 U.S.C. § 101, and claims 2–11, 13, 14, 16, 17, 19, and 20, which fall with claim 1.

Claims 21–23

Regarding dependent claim 21–23, Appellants argue that “claims 21–23 include recitations indicating that a time for presentation of the prompt is determined based on availability in electronic calendar data. Thus, the use of the *electronic* calendar data is further emphasized. For at least these additional reasons, claims 21–23 are not directed to an abstract idea and are patent eligible.” Br. 7.

Examiner respectfully disagrees, and asserts that the limitation, under the broadest reasonable interpretation, only involves using one set of data to determine a time to present a notification to a user. This step is purely abstract and does not provide any sort of technological improvement. Examiner also notes that specifying the calendar data as *electronic* calendar data does not transform the set of data into something technical; it is still a set of data.

Ans. 21. As discussed above, the additional elements that reflect automation by a computer (i.e., host device of the electronic coaching system, wearable device, electronic data), including electronic calendar data, do not necessarily indicate a technical solution. Appellants have not offered any evidence or technical reasoning as to how the use of electronic data reflects an improvement in the functioning of the claimed computer. Indeed, there are no details as to how the computer performs this task. The recitation of a result-oriented solution that lacks any details as to how the computer performed the modifications is the equivalent of the words “apply it.”

Intellectual Ventures I LLC v. Capital One Fin. Corp., 850 F.3d 1332, 1341–

42 (Fed. Cir. 2017) (*citing Elec. Power Grp., LLC*, 830 F.3d 1350, 1356 (Fed. Cir. 2016) (cautioning against claims “so result-focused, so functional, as to effectively cover any solution to an identified problem.”)). This is indistinguishable from mere instructions on a computer to provide wellness coaching based on personality and activity of a user by identifying periods of availability for presentation a prompt to a user. MPEP §§ 2106.05(f), (h). As such, we also sustain the rejection of claims 21–23 under 35 U.S.C. § 101.

Rejection III

35 U.S.C. § 103 - Claims 1–6, 13, 14, 16, 17, 19, and 20

We are not persuaded that Schwarzberg '842 does not disclose claim 1's limitation of “identifying a time for presentation of the selected prompt based on the personality profile of the user or electronic calendar data associated with the user . . . [because] a user-identified preferred exercise time is distinct from electronic calendar data.” Br. 8 (quoting Schwarzberg '842 ¶¶ 30, 34).

Examiner asserts that claim 1 recites electronic calendar data in the alternative (i.e. “based on the personality profile of the user or electronic calendar data”) and the above-copied 103 rejection of claim 1 uses prior art that discloses the claim feature “based on the personality profile of the user”. Thus, based on the alternative recitation, it is not necessary for the art to also disclose “based on ... electronic calendar data”.

Ans. 21–22 (quoting Schwartzberg '842 ¶ 34).

We agree with the Examiner that the “or” recitation in the claim does not require a finding as to both alternatives. The Federal Circuit “ha[s] consistently interpreted the word ‘or’ to mean that the items in the sequence

are alternatives to each other.” *Schumer v. Lab. Computer Sys.*, 308 F.3d 1304, 1311 (Fed. Cir. 2002). Paragraph 24 of Schwartzberg ’842 discloses that “[t]he user’s profile data and specified goal and diet and exercise preferences are considered by the expert system to tailor messages intended to reinforce and motivate behaviors that are important in helping the user reach the specified goal.” Paragraphs 34 of Schwartzberg ’842 discloses that based upon user specified times for eating meals and exercising provided in the user profile, daily tailored messages are “programmed to arrive at the cellular communications device within a certain time range based on the user’s specified times for various activities.” *See* Final Act. 9; *see also* Ans. 22. Because Appellants have not disputed or responded to the position of the Examiner, we are not apprised of error in the rejection. Accordingly, we sustain Rejection III.

Rejection IV

35 U.S.C. § 103 - Claims 7–9 and 21–23

Regarding claims 21–23, Appellants argue the cited reference fails to disclose the claimed features of “wherein identifying a time for presentation of the selected prompt includes identifying a time during a period of the one or more periods of availability” and “wherein identifying the time for presentation of the selected prompt includes identifying a time preceding, ... a period of the one or more periods of availability” because the cited paragraphs of Haughay relied upon by Examiner “do not disclose using electronic calendar data of a user.” Br. 8–9.

The Examiner responds to Appellants’ argument by explaining how these disputed limitations are interpreted and disclosed by the teachings of Haughay. *See* Ans. 22–24 (citing Haughay ¶¶ 35–36).

Appellants fail to dispute the Examiner’s interpretation and findings by pointing out specific errors or distinctions over Haughay. And, we decline to examine the claims *sua sponte*, looking for distinctions over the prior art. *Cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art.”). In the absence of a more detailed explanation, we are not persuaded of error on the part of the Examiner. *See In re Jung*, 637 F.3d. 1356, 1365 (Fed. Cir. 2011) (“[I]t has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections,” (citing *Ex Parte Frye*, 94 USPQ2d at 1072) (“The panel then reviews the obviousness rejection for error based upon the issues identified by appellant, and in light of the arguments and evidence produced thereon.”)). Accordingly, we sustain Rejection IV.

Rejection V

35 U.S.C. § 103 - Claims 10 and 11

As for claim 10 and 11, Appellants contend “Schwarzberg `335 does not cure the above-described deficiencies of the rejection of the independent claims. For at least this reason, claims 10 and 11 would not have been obvious over the cited art.” Br. 9. For the same reasons discussed above as to independent claim 1, we sustain Rejection V.

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DECISION

Rejection I under 35 U.S.C. § 112, second paragraph, is reversed.

Rejection II under 35 U.S.C. § 101 is affirmed.

Rejections III–V under 35 U.S.C. § 103 are affirmed.

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).

AFFIRMED