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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* JULIAN CHARLES NOLAN, MELANIE JANE WINDRIDGE,  
JOYCA PETRA WILMA LACROIX, CEES VAN BERKEL, and JAN  
TATOUSEK

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Appeal 2019-003364  
Application 14/511,317  
Technology Center 3600

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Before ADAM J. PYONIN, PHILLIP A. BENNETT, and  
IFTIKHAR AHMED, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the  
Examiner's rejection. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word "Appellant" to refer to "applicant" as defined in 37  
C.F.R. § 1.42(a). Appellant identifies the real party in interest as  
KONINKLIJKE PHILIPS ELECTRONICS N.V. Appeal Br. 2.

## STATEMENT OF THE CASE

### *Introduction*

The Application is directed to a “system and method for messaging a [first] user” who has a health condition, in which the system provides a “ranking of the messages from [] second users and the output of the messages in consideration of this ranking ensures that the most important or most relevant messages are given the appropriate attention by the first user.” Page 46 of the Specification filed October 10, 2014 (hereafter, “Spec.”).

Claims 1–7, 13, 14, and 16–20 are pending; claims 1, 16, and 19 are independent. App. Br. 24–30. Claim 1 is reproduced below for reference (emphases and bracketed numbering added):

1. A system for facilitating messaging for therapy adherence via influence-based message inundation impact reduction, the system comprising one or more processors configured by machine readable instructions to:

[1] store therapeutic activity information including information on therapeutic activities forming part of a therapeutic regime of a first user, the therapeutic regime of the first user relating to a health condition of the first user;

[2] monitor adherence of the first user to a therapeutic activity in the therapeutic regime;

[3] send a first message associated with the first user to second users, wherein the first message includes an indication of the adherence of the first user to the therapeutic activity;

[4] *determine an influence factor between the first user and each second user of the second users*, the influence factor indicating influence of the second user on the adherence of the first user to the therapeutic activity;

[5] assign a ranking score to each second user of the second users, based on the influence factor between the first user and the second user, such that the ranking score of a given second user of the second users is greater than the ranking score of another second user of the second users based on the influence

factor between the first user and the given second user being greater than the influence factor between the first user and the other second user;

[6] send a message prompt to one or more second users of the second users based on (i) the ranking scores of the one or more second users satisfying a predetermined score threshold and (ii) a lack of a response to the first message from the one or more second users, the message prompt including a prompt to send a response to the first user;

[7] receive responses to the first message from the second users, the responses to the first message including one or more responses received from the one or more second users responsive to the message prompt; and

[8] *cause the responses to the first message to be presented to the first user based on the ranking scores of the second users such that presentation of the response to the first message from the given second user is prioritized over presentation of the response to the first message from the other second user.*

#### *References and Rejections<sup>2</sup>*

The Examiner relies on the following prior art:

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Horvitz	US 2007/0288932 A1	Dec. 13, 2007
Carter	US 2009/0307345 A1	Dec. 10, 2009
Fradkin	US 2011/0125555 A1	May 26, 2011
Schuster	US 2011/0131060 A1	June 2, 2011
Hegeman	US 2012/0066140 A1	Mar. 15, 2012
Neystadt	US 2012/0210240 A1	Aug. 16, 2012

Claims 1–7, 13, 14, and 16–20 are rejected under 35 U.S.C. § 101 as being patent ineligible. Final Act. 2.

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<sup>2</sup> The Examiner has withdrawn the indefiniteness rejection of claims 1–7, 13, 14, and 16–20. *See* Ans. 4.

Claims 3, 7, and 18 are rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement. Final Act. 6.

Claims 1, 3–7, 14, 16, and 18–20 are rejected under 35 U.S.C. § 103 as being unpatentable over Hegeman, Carter, Neystadt, Fradkin, and Schuster. Final Act. 8.

Claims 2, 13, and 17 are rejected under 35 U.S.C. § 103 as being unpatentable over Hegeman, Carter, Neystadt, Fradkin, Schuster, and Horvitz. Final Act. 22.

## ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments. Arguments Appellant could have made but chose not to make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We discuss each of the statutory grounds of rejection in turn, below.

### *Patent Eligibility*

The Examiner determines the claims are patent ineligible 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.” Final Act. 2; *see also Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (describing the two-step framework “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.”).

After the filing of the Notice of Appeal in this case—but prior to the mailing of the Answer or the filing of the Reply Brief—the USPTO

published revised guidance on the application of § 101 (“Guidance”). *See, e.g., USPTO 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Memorandum”); USPTO October 2019 Update: Subject Matter Eligibility (Oct. 17, 2019) (“Update”), noticed at 84 Fed. Reg. 55,942 (Oct. 18, 2019).

Under Step 2A of the Guidance, the Office looks to whether the claim recites:

- (1) Prong One: any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
- (2) Prong Two: additional elements that integrate the judicial exception into a practical application (see MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office then look, under Step 2B, to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is not well-understood, routine, conventional in the field (see MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

*See Memorandum*, 84 Fed. Reg. at 56.

We agree with, and adopt as our own, the Examiner’s eligibility analysis. We add the following primarily for emphasis and clarification with respect to the Guidance.

*A. Step 2A, Prong One*

“Appellant respectfully submits that the[] claims are and remain patent-eligible under the newly revised and previous guidelines which the USPTO applied to 35 U.S.C. § 101.” Reply Br. 2. With respect to Prong One of the Guidance, Appellant contends “Appellant submits that the independent claims do not recite matter that falls within the [judicially excepted] enumerated groups,” as the claims do not recite any of the groupings of abstract ideas listed in the Guidance. *Id.* at 3.

Appellant’s arguments with respect to the categories of Prong One are conclusory, and do not show the Examiner errs in determining the limitations of claim 1 recite “certain methods of organizing human activity because they are steps that manage interactions between people,” and “[w]ith the exception of the steps being carried out using one or more processors, the language of the claims encompasses steps that can be done manually between a first user and one or more second users.” Ans. 5; *see* Reply Br. 3, 4 (quoting various cases without explaining how they apply under Prong One of the Guidance). Rather, we determine the Examiner has properly analyzed the claim limitations with respect to the abstract idea groupings under Prong One of the Guidance, as the Examiner has identified the specific limitations in the claim that fall within the subject matter groupings of abstract ideas enumerated in the Guidance. *See* Ans. 4, 5; Memorandum, 84 Fed. Reg. at 54.

Claim 1 recites a “system for facilitating messaging for therapy adherence,” and we agree with the Examiner that “[t]he current claims recite presenting received responses to a user in a prioritized order based on the influence of the sender.” Ans. 4. Claim 1 recites limitations [1], [2], [3],

[4], [5], [6], [7], [8], which coordinate communications among various users of a medical therapy system.<sup>3</sup> We agree these limitations recite “[c]ertain methods of organizing human activity,” such as “managing personal behavior or relationships or interactions between people” that entail “social activities, teaching, and following rules or instructions,” as well as “[m]ental processes” that entail steps of “observation, evaluation, judgment, opinion.” Memorandum, 84 Fed Reg. at 52; *see BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1286 (Fed. Cir. 2018) (“[T]he abstract idea of considering historical usage information while inputting data.”); *Evolutionary Intelligence LLC v. Sprint Nextel Corp.*, 677 F. App’x 679, 680 (Fed. Cir. 2017) (Determining that claims “directed to selecting and sorting information by user interest or subject matter” are abstract.). Thus, we are not persuaded the Examiner’s analysis is in error.

Accordingly, we are not persuaded the Examiner errs in determining the claims recite a judicial exception under Prong One of the Guidance. *See* Memorandum, 84 Fed. Reg. 54.

*B. Step 2A, Prong Two*

Appellant argues the Examiner’s rejection is in error, as “the claims integrate the alleged abstract idea into a practical application because the claims recite the . . . specific means or method that ‘imposes a meaningful limit on the [abstract idea], such that the claim is more than a drafting effort designed to monopolize the [abstract idea].’” Reply Br. 5 (quoting “*Revised*

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<sup>3</sup> We note claim 1 recites “one or more processors configured by machine readable instructions,” but this limitation is in the preamble and not recited in any of limitations [1], [2], [3], [4], [5], [6], [7], or [8].

*Guidance* at 18”). Particularly, Appellant contends “the claimed inventions provide a technical solution to one or more problems of conventional messaging and/or therapy adherence systems” because the claimed ranking of user messages “reduces the negative impact of message inundation” and “facilitates the increase of responses from greater influential users.” *Id.* at 4, 5.

We are not persuaded the Examiner’s rejection is in error under Prong Two of Step 2A of the *Guidance*. *See* Ans. 6, 7; Update 12, 13. The features relied on by Appellant (such as ranking users based on influence factors) are part of the judicial exception discussed above in Prong One, and do not comprise additional elements, individually or in combination, that integrate the exception into a practical application. *See* Reply Br. 5, 6; Memorandum, 84 Fed. Reg. at 54, 55. Claim 1 recites the additional element of “one or more processors,” in addition to the limitations reciting the judicial exception. This claimed “additional element merely recites the words ‘apply it’ (or an equivalent) with the judicial exception, or merely includes instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea.” Memorandum, 84 Fed. Reg. at 55; *see also* Ans. 6.

Even considered as additional elements, we disagree with Appellant’s contentions that the disputed limitations remove claim 1 from the realm of ineligible subject matter. *See* Appeal Br. 4–6. Claim 1 provides a system for organizing users and messages from users, which can be used to prioritize messages between users to encourage therapy adherence. *See* Spec. 46. Rather than improving the underlying computer or other technical systems, the system of claim 1 may yield benefits for the users receiving the

messages.<sup>4</sup> See Spec. 3, 4; Final Act. 26 (“This is not an improvement to a technology or technical field but rather an improvement in the business practice of sending messages to a user.”); see also *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (Steps including sorting were well-understood, routine, conventional activities that involve the normal, basic functions of a computer.). Thus, we are unpersuaded the Examiner errs in determining “the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception.” Ans. 6.

Appellant further argues the claimed specific manner of presenting messages “does not monopolize such messaging and/or therapy adherence systems.” Reply Br. 6. We are not persuaded of Examiner error, however. Based on the record before us, we determine that the specificity of the recited techniques is insufficient to establish patent eligibility. See *Alice*, 573 U.S. at 222, (quoting *Parker v. Flook*, 437 U.S. 584, 593 (1978)) (“In holding that the process was patent ineligible, we rejected the argument that ‘implement[ing] a principle in some specific fashion’ will ‘automatically fal[l] within the patentable subject matter of § 101.’”). Similarly, any questions on monopolization—or preemption—in the instant case have been resolved by the analysis herein and by the Examiner. See *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (“[W]here a patent’s claims are deemed only to disclose patent

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<sup>4</sup> We note that problems arising from a large volume of communication is not confined to computer messaging; such problems may arise from, for example, receiving too many phone calls or too much postal mail.

ineligible subject matter under the Alice framework, as they are in this case, preemption concerns are fully addressed and made moot”).

Accordingly, we determine claim 1 does not integrate the judicial exception into a practical application. *See* Memorandum, 84 Fed. Reg. at 54. As the “claim recites a judicial exception and fails to integrate the exception into a practical application” (*id.* at 51), “the claim is directed to the . . . judicial exception” (*id.* at 54).

*C. Step 2B*

Appellant argues claim 1 is eligible pursuant to Step 2B of the Guidance because “the inventive concept is not restricted to only the additional elements.” Reply Br. 6. Appellant further contends the “Examiner has continued to fail to provide any factual evidence that the inventive concept (e.g., the specifically-recited manner via which a message is presented) as a whole was well-understood, routine, and conventional.” *Id.* at 7.

We are not persuaded the Examiner errs. First, Appellant contends the inventive concept, under the eligibility analysis, includes the abstract idea. Reply Br. 6. Regardless of the scope of a claim’s inventive concept, Appellant’s arguments solely rely on the identified judicial exception for the purported improvements. *See* Reply Br. 7; Update page 13 (“[I]t is important to keep in mind that an improvement in the judicial exception itself . . . is not an improvement in technology.”); *Berkheimer v. HP, Inc.*, 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring) (“the ‘inventive concept’ cannot be the abstract idea itself”); *see also BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been

clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”) (internal citation omitted). As discussed above, the specifically-recited manner of claim 1 is part of the recited judicial exception; it does not comprise “additional elements individually and in combination” that may “provide an inventive concept” amounting to “significantly more than the exception itself.” Memorandum, 84 Fed. Reg. at 55–56; *see also id.* at 55 n.24.

The additional elements of claim 1 (i.e., the one or more processors) are “no more than mere instructions to apply the exception using a generic computer component, which cannot provide an inventive concept” sufficient to render the claims eligible. Ans. 6; *see also* Final Act. 29 (citing page 11 of the Specification); Spec. 11:1–25, 32:4–9; 46:22–31; *Alice*, 573 U.S. at 226 (“Nearly every computer will include a ‘communications controller’ and ‘data storage unit’ capable of performing the basic calculation, storage, and transmission functions required by the method claims.”); *I/P Engine, Inc. v. AOL Inc.*, 576 F. App’x 982, 995 (Fed. Cir. 2014) (“[T]he clear advantages of combining content-based and collaborative filtering were widely recognized at the time of the claimed invention.”). Thus, we determine independent claim 1’s claim elements, individually and as an ordered combination, do not provide significantly more than the recited judicial exception.

We are not persuaded the Examiner errs in determining independent claim 1 is patent ineligible. Appellant does not separately argue the remaining claims. Accordingly, we sustain the Examiner’s eligibility rejection of claims 1–7, 13, 14, and 16–20. *See* Final Act. 5.

*Written Description*

The Examiner finds dependent claims 3, 8, and 18 lack written description support:

As per Claims 3 and 18, the claims recite “increasing the ranking score of the second user”. However, there is not sufficient support in the specification for the concept of increasing a ranking score. . . .

As per Claim 7, the claim recites recite “decreasing the ranking score of the second user”. However, there is not sufficient support in the specification for the concept of decreasing a ranking score.

Final Act. 6. In the Answer, the Examiner further states “[n]o algorithm is disclosed or provided to explain a manner in which the ranking score is increased or decreased, by how much one would increase or decrease the ranking score based on the update of the ranking.” Ans. 7.

Appellant argues the Examiner errs, because “it is clear that the Specification conveys with reasonable clarity to those skilled in the art that Appellant was in possession of the claimed invention, including the recitation of ‘increasing the ranking score of the second user’ and ‘decreasing a ranking score.’” Appeal Br. 19. Particularly, Appellant contends the “Specification, for example, discloses . . . . the system updates the ranking of the second users (based on whether the first user carried out the therapeutic activity),” and “one skilled in the art would know that updating ‘a ranking’ includes increasing the ranking score and/or decreasing the ranking score.” Reply Br. 7, 8 (quoting Spec. 21:10–17, 22:30–32).

We are persuaded the Examiner’s written description rejection is in error. An update to a ranking, such as described in the Specification, necessarily results in the existing ranking being decreased or increased. *See*

Spec. 21:30–32 (“[T]he system can check to see if the user reads the second users’ messages, and can update the rankings.”) Thus, we agree with Appellant that the Specification provides sufficient written description support for the claimed *increase* or *decrease* of the ranking score. See Appeal Br. 19.

Further, although the Examiner states that the Specification does not provide an algorithm for increasing or decreasing the ranking (Ans. 7), the Examiner does not explain why one of skill in the art would require such step by step disclosure to understand the Appellant had possession (of the idea of increasing or decreasing a number stored in a computer system). Based on the record before us, we do not find such elaborate disclosure is necessary to show possession of such an *update*. Rather, the Specification discloses “the claimed function in sufficient detail that one of ordinary skill in the art can reasonably conclude that the inventor possessed the claimed subject matter at the time of filing.” *Examining Computer-Implemented Functional Claim Limitations for Compliance with 35 U.S.C. 112*, 84 Fed. Reg. 57, 61 (Jan. 7, 2019).

Accordingly, we do not sustain the Examiner’s written description rejection of claims 3, 7, and 8.

### *Obviousness*

Appellant argues the Examiner’s obviousness rejection is in error, because “the cited references fail to teach or suggest at least the claim features” of independent claim 1. Appeal Br. 20. Appellant argues “[t]here is no description whatsoever in [Neystadt] of determining an influence factor indicating influence of each one of the second users on the adherence of the

first user to the activity,” as claimed. Reply Br. 8; *see also* Appeal Br. 21. Appellant further argues Carter does not teach or suggest the claimed “ranking the second users based on their influence factors,” or “sending a message prompt to one or more second users of the second users, where the message prompts are sent based on the ranking scores of the one or more second users.” Appeal Br. 21 (emphasis omitted). Moreover, Appellant contends Fradkin “does not describe sending a message prompt to one or more second users of the second users based on the ranking scores of the one or more second users satisfying a predetermined score threshold,” as required by claim 1. Reply Br. 9 (emphasis omitted); *see also* Appeal Br. 22.

Appellant’s arguments against the individual references fail to show the Examiner errs in finding the combined teachings of the references would have suggested the limitations of claim 1. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (“The test for obviousness is not . . . that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.”). Thus, we are not persuaded the Examiner errs in finding claim 1 to be obvious in view of the combination of cited references. *See* Ans. 7–9.

We adopt as our own the findings and reasons set forth by the Examiner. For example, the Examiner finds, and Appellant does not challenge, that Hegeman teaches a social network for medical adherence support, including sending messages of encouragement based on prompting. *See* Ans. 7, 8; Hegeman ¶ 49 (“[A]n announcement [may] be transmitted to the one or more other users,” and [t]he one or more other users may

thereafter, depending on the patient's response or responses to the query, send the patient messages reinforcing compliance with the patient's schedule.”). The Examiner finds Neystadt and Carter teach ranking content and users based on the users’ influence. *See* Ans. 8; Neystadt ¶ 43 (“The combination of a person’s general influence coupled with the user’s trust in the person may result in an influence factor from which the people in the social network may be ranked or arranged.”); Carter ¶ 12 (“The relevancy is based on a strength factor derived at least in part on monitored relationship interactions between the user and the content producer,” and “[w]hen being presented, the digital media content having a greater relevancy weight receives a higher priority than other digital media content available to the user from the plurality of content producers.”). The Examiner additionally finds the claimed prompting is taught by Fradkin and Schuster. *See* Final Act. 13; Fradkin ¶¶ 3–5 (discussing prompting users to communicate with each other based on shared interests); Schuster<sup>5</sup> ¶ 131 (“Secondary supporters can be contacted to provide an additional level of peer pressure to help motivate patient adherence” if the “primary supporter [is] not responding the reminder service.”).

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<sup>5</sup> We note Appellant does not challenge the Examiner’s reliance on Schuster. *See* Appeal Br. 20–22; Final Act. 13 (“[S]econdary supporter, not as important or influential as a primary supporter, is not contacted unless the primary supporter is not responding to the reminder service.”). Accordingly, Appellant has waived any challenge to these aspects of the rejection. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential); *Hyatt v. Dudas*, 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (The Board may treat arguments Appellant failed to make for a given ground of rejection as waived).

We further find reasonable, and Appellant does not challenge, the Examiner’s rationale for combining the cited references. *See* Final Act. 8–14; Ans. 7–9; Appeal Br. 20–22. Accordingly, we do not find the Examiner erred in finding claim 1 to be obvious in view of the combined teachings of Hegeman, Carter, Neystadt, Fradkin, and Schuster. Appellant does not present separate substantive arguments for the remaining claims. *See* App. Br. 20–22. Thus, we sustain the Examiner’s obviousness rejection of claims 1–7, 13, 14, and 16–20.

#### DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis/Reference(s)</b>	<b>Affirmed</b>	<b>Reversed</b>
1–7, 13, 14, 16–20	101	Eligibility	1–7, 13, 14, 16–20	
3, 7, 18	112(a)	Written Description		3, 7, 18
1, 3–7, 14, 16, 18–20	103	Hegeman, Carter, Neystadt, Fradkin, Schuster	1, 3–7, 14, 16, 18–20	
2, 13, 17	103	Hegeman, Carter, Neystadt, Fradkin, Schuster, Horvitz	2, 13, 17	
<b>Overall Outcome</b>			1–7, 13, 14, 16–20	

Appeal 2019-003364  
Application 14/511,317

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED