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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEAN-FRANCOIS BEAULE

Appeal 2019-005763¹
Application 13/270,971
Technology Center 3600

Before ERIC S. FRAHM, JOYCE CRAIG, and MATTHEW J. McNEILL,
Administrative Patent Judges.

FRAHM, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Introduction

Appellant² appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60. Claims 5–10,

¹ Throughout this Opinion, we refer to: (1) the Final Office Action mailed June 13, 2018 (“Final Act.”); (2) the Supplemental Appeal Brief filed February 5, 2019 (“Appeal Br.”); (3) the Examiner’s Answer mailed May 28, 2019 (“Ans.”); and (4) the Reply Brief filed July 25, 2019 (“Reply Br.”).

² We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. “The word ‘applicant’ when used in this title refers to the inventor or all of the joint inventors, or to the person applying for a patent as provided in §§ 1.43, 1.45, or 1.46.” 37 C.F.R. § 1.42(a). Appellant

16–21, 24–35, 37, 39, 42, 45–49 have been canceled (*see* Appeal Br. 32, Claims Appendix). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm the rejection under 35 U.S.C. § 101, and reverse the obviousness rejections under 35 U.S.C. § 103. Therefore, because we affirm at least one rejection for each pending claim, we affirm.

Appellant’s Disclosed and Claimed Invention

Appellant’s invention, entitled “SYSTEMS AND METHOD FOR DETERMINING AND MANAGING AN INDIVIDUAL AND PORTABLE HEALTH SCORE” (Title), “relates to improving individual health and wellness and more particularly relates to systems and methods for determining and managing an individual and portable health score” (Spec. ¶ 2), and more specifically to “a unique health score that reflects the combination of an individual's health status and the value of the individual’s actions” (Spec. ¶ 3). With this in mind, Appellant’s claimed invention concerns “[a] computer-implemented method for a portable health score” (claim 1), and “[a] system for determining a portable health score” (claim 13).

Exemplary Claim

Independent claim 1 under appeal is exemplary. Claim 1, with bracketed lettering, formatting, and emphases added to key portions of the claim at issue, reads as follows:

1. A computer-implemented method for a portable health score comprising:

[A] receiving, at a first device belonging to and operated by a first entity comprising a processor and a data server,

identifies the real party in interest as UnitedHealth Group, Incorporated (Appeal Br. 2).

healthcare data for a first user different from the first entity, from one or more healthcare data sources different from the first user and the first entity, wherein the first user is a customer, and wherein the receiving of healthcare data further comprises receiving electronic medical records from an electronic medical record vendor entity via a communication network;

[B] determining, with the first device, one or more relevant health factors based on the individual healthcare data, where the one or more relevant health factors comprise one or more core health factors, one or more age-gender based health factors, or one or more health condition based factors;

[C] determining, with the first device, a health score based on the one or more relevant health factors;

[D] providing data specifying one or more qualified actions that affect the health score and a health score change associated with completion of each respective qualified action from the one or more qualified actions, wherein the one or more qualified actions comprise actions administered by a qualified action provider and taken by the first user to improve the first user's health;

[E] identifying a set of certified qualified action providers, wherein the set of certified qualified action providers comprise qualified action providers who administer qualified actions that have been properly reviewed and vetted;

[F] receiving, by the first device, completion healthcare data indicating that the user completed one or more qualified actions from the one or more qualified actions that affect the health score;

[G] determining an applicability of the one or more qualified actions completed by the user in response to receiving the completion healthcare data, wherein determining the applicability of the one or more qualified actions includes attempting to certify the one or more qualified actions by, for each of the one or more qualified actions:

[G1] (a) identifying a qualified action provider that provided the qualified action,

[G2] (b) determining whether the qualified action provider is included in the set of certified qualified action providers, and

[G3] (c) in an instance in which the qualified action provider is included in the set of certified qualified action providers, [G3a] determining whether the qualified action provider verified that the first user successfully completed the qualified action;

[H] determining that the user completed the one or more qualified actions within a corresponding period of applicability;

[I] updating, by the first device, the health score based on the one or more qualified actions completed by the user in response to receiving the completion healthcare data;

[J] receiving, from a device of the first user, first user data authorizing a second entity to access healthcare data from the first device, and not authorizing a third entity to access healthcare data from the first device, the second entity being different from the first entity, and the third entity being different from the first and second entities;

[K] receiving, from the second entity, a request for healthcare data of the first user, and in response to the request provide healthcare data including the updated health score to the second entity;

[L] receiving, from the third entity, a request for healthcare data of the first user, and in response to the request not provide healthcare data to the third entity;

[M] causing generation of a reward based on the updated health score; and

[N] causing the award to be provided to the user.

Appeal Br. 22–25, Claims Appendix (emphases, formatting, and bracketed lettering/numbering added). Remaining independent claim 13 recites

commensurate limitations pertaining to “[a] system for determining a portable health score” (claim 13) that substantially performs the method of claim 1.

Examiner’s Rejections

(1) Claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter (an abstract idea), without significantly more. Final Act. 3–5; Ans. 3–9.

(2) Claims 1, 2, 13, 14, 36, 38, 40, 41, 43, 44, 50, 51, and 53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rothman et al. (US 8,403,847 B2; issued March 26, 2013) (hereinafter, “Rothman”), Austrum et al. (US 2014/0372133 A1; published Dec. 18, 2014) (hereinafter, “Austrum”), and Fotsch et al. (US 2005/0165627 A1; published July 28, 2005) (hereinafter, “Fotsch”). Final Act. 5–12.

(3) Claims 3, 4, 11, 15, 22, and 52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rothman, Austrum, Fotsch, and Balassanian (US 2012/0089413 A1; published April 12, 2012). Final Act. 12–15.

(4) Claims 12 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rothman, Austrum, Fotsch, and Olaniyan (US 8,392,207 B2; issued March 5, 2013). Final Act. 15–16.

Appellant’s Contentions

(1) With regard to the patent eligibility rejection, Appellant primarily makes arguments regarding claim 1, relies on those arguments for the eligibility of claims 2–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60,

and generally contends the claims are not directed to an abstract idea (e.g., math concepts, methods of organizing human activity, mental processes), but to improvements in computer function (*see* Appeal Br. 8–16; Reply Br. 2–3).

Therefore, based on Appellant’s patent eligibility arguments, and because claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 contain commensurate limitations, we select claim 1 as representative of claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 rejected under 35 U.S.C. § 101 for patent-ineligibility.

(2) With regard to the obviousness rejections of claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–53, Appellant primarily argues the merits of independent claims 1 and 13 (*see* Appeal Br. 16–20), and makes similar arguments as to the patentability of remaining independent claim 13, as well as all pending dependent claims (*see* Appeal Br. 20). Claims 1 and 13, as independent claims, recite commensurate limitations regarding a method for determining a portable health score.

Principal Issues on Appeal

Based on Appellant’s arguments in the Appeal Brief (Appeal Br. 8–20) and the Reply Brief (Reply Br. 2–4), the following two principal issues are presented on appeal:

(1) Has Appellant shown the Examiner erred in rejecting representative claim 1, as well as claims 2–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 grouped therewith, under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter (i.e., a judicial exception such as an abstract idea), without significantly more?

(2) Did the Examiner err in rejecting claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–53 under 35 U.S.C. § 103(a) as being unpatentable over the base combination of Rothman, Austrum, and Fotsch, because the Examiner fails to show Austrum, and thus the combination, teaches or suggests the disputed limitations E and G3a recited in claim 1, and commensurately recited in claim 13?

ANALYSIS

Patent Eligibility Under 35 U.S.C. § 101

Section 101 of the Patent Act provides “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See 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, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. (15 How.) 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 176; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula

to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (internal quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO published revised guidance on the application of § 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”).³ Under the Guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes) (“Step 2A, Prong 1”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING

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

PROCEDURE (“MPEP”) §§ 2106.05(a)–(c), (e)–(h)) (9th Ed., Rev. 08.2017, 2018) (“Step 2A, Prong 2”).⁴

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

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

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception (“Step 2B”).

See Guidance, 84 Fed. Reg. at 54–56.

Even if the claim recites an abstract idea, the Federal Circuit explains the “directed to” inquiry is not simply asking whether the claims involve a patent-ineligible concept:

The “directed to” inquiry . . . cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon—after all, they take place in the physical world. *See Mayo*, 132 S.Ct. at 1293 (“For all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.”) Rather, the “directed to” inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether “their character as a whole is directed to excluded subject matter.”

⁴ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* Guidance - Section III(A)(2), 84 Fed. Reg. 54–55.

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016); *see also Diehr*, 450 U.S. at 188 (“In determining the eligibility of respondents’ claimed process for patent protection under § 101, their claims must be considered as a whole.”); *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016) (the question is whether the claims as a whole “focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery”).

Step 1

Under Step 1 of the patent-eligibility inquiry under § 101, we determine whether a claim is directed to one of the four statutory categories of invention, i.e., a process, machine, manufacture, or composition of matter.

Representative claim 1 recites “[a] computer-implemented method for a portable health score” (preamble) including a series of steps for gathering health care data (limitations A, F, J–L), determining a health score based on health factors and the data (limitations B, C) to specify applicable actions to be taken D, G–I) and provide a reward to users for taking certain actions (limitations M, N). Therefore, claim 1, as a method claim reciting a process having a series of steps, recites at least one of the enumerated categories (e.g., process) of eligible subject matter in 35 U.S.C. § 101.

As a result, as to representative claim 1, we continue our analysis under Step 2A, Prong 1 of the Guidance to determine whether claim 1 recites a judicial exception (a law of nature, natural phenomenon, or subject matter within the enumerated groupings of abstract ideas above).

Step 2A, Prong 1

Although claim 1 recites a “computer-implemented method for a portable health score” (see claim 1, preamble) including a series of steps for gathering health care data (claim 1, limitations A, F, J–L), determining a health score based on health factors and the data (claim 1, limitations B, C) to specify applicable actions to be taken D, G–I) and provide a reward to users for taking certain actions (claim 1, limitations M, N), the focus of claim 1 is on performing the steps of a mental process, e.g., determining a portable health score to determine a reward/award (see *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). The mental process includes steps B–E and G–I set forth in the body of claim 1. See, e.g., *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146 (Fed. Cir. 2016) (“analyzing information by steps people [can] go through in their minds, or by mathematical algorithms, without more [are] mental processes within the abstract-idea category.”); *Clarilogic v. Formfree Holdings*, 681 F. App’x 950, 954–55 (Fed. Cir. 2017) (gathering, analyzing, and outputting financial data/assessment is an abstract idea that is patent ineligible); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015) (targeted marketing is a form of “tailoring information based on [provided] data,” which has been previously held by the Federal Circuit to be an abstract idea, and a concept that is a “fundamental practice” that dates back to newspaper advertisements); *Morsa v. Facebook, Inc.*, 77 F. Supp. 3d 1007, 1014 (C.D. Cal. 2014) (finding that both “targeting advertisements to certain consumers, and using a bidding system to determine when and how advertisements will be displayed” are abstract ideas), *aff’d per curiam*, 622 F. App’x 915 (Fed. Cir. 2015); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d

709, 714 (Fed. Cir. 2014) (determining that using an advertisement as an exchange or currency is an abstract idea).

Steps B–E and G–I also constitute an organization of human activity, such as determining one or more relevant health factors (claim 1, limitation B), determining a health score (claim 1, limitation C) to provide data specifying qualified actions to be taken (claim 1, limitation D) and identify a set of certified qualified action providers (claim 1, limitation E) and determine applicability of the qualified actions completed by the user through certification (claim 1, limitation G), which is a business relation between people or commercial transaction. As such, the claimed invention recites a mental process, which is an abstract idea.

The Examiner determines, and we agree, that claim 1 recites certain methods of organizing human activity and mental processes (*see* Final Act. 3; Ans. 4–5), such as “determining a portable health score for a patient using core health factors, age/gender based factors, and health condition factors” (Final Act. 3), “by managing interactions between a user, qualified actions, and a qualified action provider” (Ans. 4).

Our reviewing court has also concluded that abstract ideas include the concepts (i.e., mental processes) of collecting data, recognizing certain data within the collected data set, and storing the data in memory. *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014); *see also Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1372 (Fed. Cir. 2017) (concluding “claims directed to the collection, storage, and recognition of data are directed to an abstract idea”). Moreover, our reviewing court has concluded that acts of parsing, comparing, storing, and editing data are abstract ideas.

Berkheimer v. HP Inc., 881 F.3d 1360, 1366 (Fed. Cir. 2018). In addition, the collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Similarly, “collecting, displaying, and manipulating data” is an abstract idea.

Intellectual Ventures I LLC v. Capital One Fin. Corp., 850 F.3d 1332, 1340 (Fed. Cir. 2017); *see also SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (“merely presenting the results of abstract processes of collecting and analyzing information . . . is abstract as an ancillary part of such collection and analysis”) (quotations omitted).

In addition, our reviewing court has held that combining several abstract ideas (e.g., like a mental process and a fundamental economic activity as here) does not render the combination any less abstract.

RecogniCorp, LLC v. Nintendo Co., 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea . . . to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (patent-ineligible claims were directed to a combination of abstract ideas).

In view of the foregoing, we conclude claim 1 recites determining a health score to determine a reward to be issued, which is a mental process and method of organizing human activity, such as a commercial interaction and/or business relation between people. Because we conclude claim 1 *recites* an abstract idea and/or combination of abstract ideas, we proceed to Step 2A, Prong 2 of the Guidance to determine whether claim 1 is “directed to” the judicial exception, by determining whether additional elements of the claim integrate the abstract idea into a practical application. Such additional

elements *may* reflect an improvement to a technology or technical field. *See* Guidance, 84 Fed. Reg. at 55.

Step 2A, Prong 2 – Practical Application

Under Step 2A, Prong 2, we determine whether the recited judicial exception is integrated into a practical application of that exception. If the recited judicial exception is integrated into a practical application, the claim is not directed to the judicial exception.

Appellant contends that claim 1 is not directed to an abstract idea, but to “a particular inventive technology for calculating a health score” (Appeal Br. 13) that constitutes “a unique approach for controlling access to healthcare data associated with the health score” (Appeal Br. 13–14). Appellant further contends that this unique approach provides “practical application” such as “programmatically calculating and updating a health score (reciting in detail many of the granular programmatic steps involved in one specific procedure for calculating a health score based on calculation, and in some cases, re-calculation, of intermediate scores) AND programmatically controlling access to healthcare data associated with the health score” (Reply Br. 3).

We disagree with Appellant (*see* Appeal Br. 13–14; Reply Br. 3) that the focus of claim 1 is on a technical improvement (or practical application of the abstract idea). “[M]erely selecting information, by content or source, for collection [and] analysis . . . does nothing significant to differentiate a process from ordinary mental processes.” *Elec. Power*, 830 F.3d at 1355. Receiving and analyzing (or identifying data), by itself, does not transform an otherwise-abstract process or system of information collection and analysis. *See id.* Like the claims at issue in *Electric Power*, we find

Appellant's claim 1 does not invoke "any assertedly inventive programming" or an "arguably inventive set of components or methods." *Id.*

The mere recitation of determining a portable health score to provide rewards/awards in claim 1 does not embody an improvement in computer capabilities as in *Enfish*. See 822 F.3d at 1336 ("[T]he plain focus of the claims is on an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity."). Rather, the focus of claim 1 is on determining compliance with certain qualified health actions to issue a reward. This is an improvement to help the *user* and/or *employer*, but not the *computer itself* (or in the case of claim 1, the memory and processor of the first device, and/or the communications network, or device of the first user set forth in the claim). Claim 1 does not recite a method that improves the speed or efficiency of the communications network or computer systems, or otherwise improves any of these elements.

To the extent that the claimed method performs fraud detection in travel expense reimbursements faster or more accurately than other computerized methods, that would not provide an improvement to the computer itself. See, e.g., *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (explaining that in order for a machine to add significantly more, it must "play a significant part in permitting the claimed method to be performed, rather than function solely as an obvious mechanism for permitting a solution to be achieved more **quickly**") (emphasis added); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (2016) ("While the claimed system and method certainly purport to accelerate the process of analyzing audit log data, the speed increase comes

from the capabilities of a general-purpose computer, rather than the patented method itself”); *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter”).

The steps of (i) limitations A, F, and J through L are merely conventional data gathering and analysis (*see* MPEP § 2106.05(g); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *Elec. Power*, 830 F.3d at 1354); and (ii) limitation G is insignificant extra-solution activity that does not meaningfully limit the claim (*see* MPEP § 2106.05(g)). As such, based on the record before us, we determine that the claimed invention is not integrated into a practical application.

Merely adding a programmed computer to perform generic computer functions does not automatically overcome an eligibility rejection. *Alice*, 573 U.S. at 223–24. Furthermore, the use of a general purpose computer to apply an otherwise ineligible algorithm does not qualify as a particular machine. *See Ultramercial*, 772 F.3d at 716–17; *In re TLI Commc’ns LLC v. AV Automotive, LLC*, 823 F.3d 607, 613 (Fed. Cir. 2016) (mere recitation of concrete or tangible components is not an inventive concept); *EON Corp. IP Holdings LLC v. AT&T Mobility LLC*, 785 F.3d 616, 623 (Fed. Cir. 2015) (noting that *Alappat*’s rationale that an otherwise ineligible algorithm or software could be made patent-eligible by merely adding a generic computer to the claim was superseded by the Supreme Court’s *Bilski* and *Alice* decisions). In the instant case, using a computer to more accurately ensure issuance of rewards for a health score based on qualified actions being taken is nothing more than the abstract idea itself.

For the reasons discussed above, we conclude Appellant’s claim 1 (and claims 2–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 grouped therewith) invokes generic computer components (computer systems, memory, processor, communications network) merely as tools in which the computer instructions apply the judicial exception and, thus, the abstract idea is not integrated into a practical application. Because Appellant has not persuaded us the Examiner’s determination that claim 1 recites an abstract idea under Step 2A is in error, and claim 1 recites a judicial exception (i.e., the abstract idea of a method of organizing human activity and/or mental process) that is not integrated into a practical application, in accordance with the Guidance, we conclude claim 1 and claims 2–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 grouped therewith, are directed to an abstract idea under Step 2A, and the eligibility analysis with regard to claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 proceeds to Step 2B.

Step 2B – Inventive Concept

Having determined claim 1 and claims 2–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 grouped therewith are directed to an abstract idea that is not integrated into a practical application, we now evaluate whether the additional elements, whether examined alone or as an ordered combination, add a specific limitation that is not well-understood, routine, or conventional activity in the field, or simply append well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the abstract idea. *See generally* Guidance.

Here, claim 1 recites the additional elements of “a first device” having “a processor and a data server” connected to “a communication network” for communication to “an electronic medical record vendor entity” (claim 1,

limitation A), and “a device of the first user” (claim 1, limitation J). Considering claim 1 as a whole, none of the additional elements applies or uses the abstract idea in a meaningful way such that the claim as a whole is more than a drafting effort designed to monopolize the exception.

Although Appellant contends the Examiner has not met the required burden of showing the additional elements to be well-understood, routine, and conventional (*see* Appeal Br. 14–16), we agree with the Examiner (Final Act. 4; 6–8) that that burden has been met. At least paragraphs 128 through 146 and Figures 7–10 support the Examiner’s findings in this regard. In addition, the Examiner determines, and we agree, that the only elements beyond the abstract idea are *generic* computer components or combinations of generic components used to perform *generic* computer functions (Final Act. 4; Ans. 8)—a determination that is supported by Appellant’s Figures 7 through 10 and the accompanying descriptions found in the Specification (*see* Spec. ¶¶ 128–146). Appellant’s Specification only shows (*see* Figs. 7–10) and describes (*see e.g.*, Spec. ¶¶ 128–146) well-understood, routine, conventional computer components used for ensuring accurate reimbursement of travel expenses (e.g., a computing device/system, processor, memory, and communications network) that are in a general purpose computing environment in a manner that indicates the components and the functions they perform were well-known in the art. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986) (explaining that “a patent need not teach, and preferably omits, what is well known in the art”); *see also* USPTO, Memorandum on Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*) at 3 (Apr. 19,

2018), available at <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF> (explaining that a specification that describes additional elements “in a manner that indicates that the additional elements are sufficiently well-known that the specification does not need to describe the particulars of such additional elements to satisfy 35 U.S.C. § 112(a)” can show that the elements are well understood, routine, and conventional); *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1331 (Fed. Cir. 2017) (“The claimed mobile interface is so lacking in implementation details that it amounts to merely a generic component (software, hardware, or firmware) that permits the performance of the abstract idea, i.e., to retrieve the user-specific resources.”).

As a result, we are not persuaded that the travel reimbursement and compliance determinations recited in claim 1 are anything beyond generic computer functions. Considering the elements of claim 1 individually and as an ordered combination, claim 1 does no more than simply instruct the practitioner to implement the abstract idea on a generic computer, processor, and/or user interface. *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333–34 (Fed. Cir. 2012) (“Simply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render [a] claim patent eligible.”)

Additionally, as noted in MPEP § 2106.05(d)(II), the courts have previously recognized that using computer processors and memories to collect data and keep records, perform repetitive calculations, and/or receive/send data are well-understood, routine, and conventional functions when they are claimed in a merely generic manner (e.g., at a high level of generality) or as insignificant extra-solution activity (*see* MPEP

§ 2106.05(d)(II)(i)–(iv). *See also Berkheimer*, 881 F.3d at 1366 (acts of parsing, comparing, storing, and editing data are abstract ideas); *SAP Am., Inc. v. Investpic, LLC*, 898 at 1167 (Fed. Cir. 2018) (“merely presenting the results of abstract processes of collecting and analyzing information . . . is abstract as an ancillary part of such collection and analysis”); *Intellectual Ventures I*, 850 F.3d at 1340 (“collecting, displaying, and manipulating data” is an abstract idea); *Smart Sys.*, 873 F.3d at 1372 (concluding “claims directed to the collection, storage, and recognition of data are directed to an abstract idea.”).

As a result, Appellant has not persuaded us the Examiner erred with respect to the Guidance’s Step 2B analysis. *See* Guidance, 84 Fed. Reg. at Step 2B.

Summary

As explained above, under the USPTO’s Revised Patent Eligibility Guidance, based on the record before us, and informed by our governing case law concerning 35 U.S.C. § 101, Appellant has not sufficiently shown the Examiner erred in rejecting representative claim 1, as well as claims 2–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 grouped therewith, as being directed to patent-ineligible subject matter without significantly more, and we sustain the rejection of claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 under 35 U.S.C. § 101.

Obviousness Under 35 U.S.C. § 103(a)

We have reviewed the Examiner’s obviousness rejections of claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–53 (Final Act. 5–16), and response to Appellant’s arguments in the Appeal Brief (Ans. 10–11), in light

of Appellant’s arguments in the Appeal Brief (Appeal Br. 16–20) that the Examiner has erred. We agree with Appellant’s arguments that the Examiner has erred. Our reasoning follows.

The USPTO “must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks and citation omitted); *see Synopsys, Inc. v. Mentor Graphics Corp.*, 814 F.3d 1309, 1322 (Fed. Cir. 2016) (stating that, as an administrative agency, the PTAB “must articulate logical and rational reasons for [its] decisions” (internal quotation marks and citation omitted)).

We give the contested claim limitations the broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Based on the plain and ordinary meaning of “certified qualified action providers” as used in limitations E and G3a of claim 1, and in remaining independent claim 8, and in light of Appellant’s disclosures in paragraphs 113, 114, and 150 of the Specification concerning review of qualified actions by qualified action providers “against well established, certified health and wellness standards” (Spec. ¶ 113), and further based on the explicit recitations in limitations E and G3a that the certified qualified action providers are “qualified action providers who administer qualified actions that have been properly reviewed and vetted” (claim 1, limitation E) and “verif[y] that the first user successfully completed the qualified action” (claim 1, limitation G3a), we cannot agree with the Examiner (*see* Ans. 10–11) that the health plan specialists (Austrum ¶ 127), provider of in-person coaching (Austrum ¶ 129), health coach

(Austrum ¶ 153), or third-party health coach providers (Austrum ¶ 134) are encompassed by the term “*certified* qualified action providers” (claims 1, 13) (emphasis added). Austrum is silent as to whether or not the coach or third-party health coach is certified and capable of reviewing well established, certified health and wellness standards in order to make determinations about successful completion of qualified actions. One of ordinary skill in the art would understand that such certification may have life or death consequences for users.

We will not resort to speculation or assumptions to cure the deficiencies in the Examiner’s fact finding. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). The Examiner has not provided a prima facie case of obviousness on this record, and does not make any determination concerning whether or not it would have been obvious to one of ordinary skill in the wellness/medical art to limit providers to “certified qualified action providers” that “have been properly reviewed and vetted” (claims 1, 13).

Based on the record before us, we find that the Examiner has not properly established factual determinations and articulated reasoning with a rational underpinning to support the legal conclusion of obviousness for claims 1 and 13, resulting in a failure to establish a prima facie of obviousness. As a result, based on the record before us, Appellant has shown the Examiner erred in rejecting independent claims 1 and 13, and thus claims 2–4, 11, 12, 14, 15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–53 depending respectively therefrom, under 35 U.S.C. § 103, and we cannot sustain the Examiner’s obviousness rejections of claims 1–4, 11–15, 22, 23,

36, 38, 40, 41, 43, 44, and 50–60 over the base combination of Rothman, Austrum, and Fotsch.

CONCLUSIONS

(1) As explained above, under the USPTO’s Revised Patent Eligibility Guidance, based on the record before us, and informed by our governing case law concerning 35 U.S.C. § 101, Appellant has not shown the Examiner erred in rejecting representative claim 1, as well as claims 2–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 grouped therewith, as being directed to patent-ineligible subject matter without significantly more, and we sustain the rejection of claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60 under 35 U.S.C. § 101.

(2) In addition, Appellant has shown the Examiner erred in rejecting claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–53 as being unpatentable under 35 U.S.C. § 103. In view of the foregoing, we do not sustain the obviousness rejections of claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–53 as being obvious over the same base combination of Rothman, Austrum, and Fotsch.

In summary, we affirm the Examiner’s decision to reject claims 1–4, 11–15, 22, 23, 36, 38, 40, 41, 43, 44, and 50–60, because at least one ground of rejection has been affirmed for each claim. *See* 37 C.F.R. § 41.50(a)(1) (“The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed”).

For all of the reasons above, we hold as follows:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-4, 11-15, 22, 23, 36, 38, 40, 41, 43, 44, 50-60	101	Eligibility	1-4, 11-15, 22, 23, 36, 38, 40, 41, 43, 44, 50-60	
1, 2, 13, 14, 36, 38, 40, 41, 43, 44, 50, 51, 53	103(a)	Rothman, Austrum, Fotsch		1, 2, 13, 14, 36, 38, 40, 41, 43, 44, 50, 51, 53
3, 4, 11, 15, 22, 52	103(a)	Rothman, Austrum, Fotsch, Balassanian		3, 4, 11, 15, 22, 52
12, 23	103(a)	Rothman, Austrum, Fotsch, Olaniyan		12, 23
Overall Outcome			1-4, 11-15, 22, 23, 36, 38, 40, 41, 43, 44, 50-60	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. §§ 41.50(f), 41.52(b) (2013).

AFFIRMED