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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS A. PLOCHER

Appeal 2011-003335
Application 11/200,683
Technology Center 3700

Before DEMETRA J. MILLS, MELANIE L. McCOLLUM, and
STEPHEN WALSH, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134. The Examiner has rejected the claims for obviousness. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF CASE

The following claim is representative.

12. A system comprising:

a processor programmed to collect a plurality of different physiological parameters from an individual;

the processor programmed to analyze the collected parameters, compare the collected parameters to members of a plurality of predetermined values and determine a relative range relationships between each collected parameter and an associated member of the plurality of predetermined values;

a display for visually presenting graphical images including a plurality of physiological parameter identifying icons disposed on the display;

the processor programmed, responsive to at least some of the determined range relationships to presents on the display range indicating icons indicative of the relationships where each range indicating icon is displayed directly adjacent a corresponding physiological parameter identifying icon and wherein the range indicating icons and parameter identifying icons are devoid of numbers or text labels; and

the processor programmed to transmit indicia pertaining to at least one of the pictographic icons to a displaced location.

Cited References

Crawford, Jr.	US 5,331,549	Jul. 19, 1994
Jung Richardson	US 2002/0052763 A1	May 2, 2002

Grounds of Rejection

Claims 12-18, 20-24, and 26-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Crawford in view of Richardson.

FINDINGS OF FACT

The Examiner's findings of fact are set forth in the Answer at pages 3-5.

Discussion

ISSUE

The Examiner concludes that

Crawford discloses icons identifying physiological parameters and range indicating icons (see figure 3 above). Under the interpretation where the colored bar for each physiological parameter is an icon, the range indicating icons are devoid of numbers and text. Crawford fails to disclose physiological parameter icons being devoid of numbers or text labels. However, Richardson a reference in an analogous art of physiological monitoring and medical information display teaches using icon based interfaces for displaying information (Richardson paragraphs 0004, 0005, see abstract). It would have been obvious to one of ordinary skill in the art to replace the text and numbers in the interface of Crawford with icons as taught by Richardson, since Richardson states that icon - based interfaces are easy to understand and allow patients or caretakers with minimal computer skills to successfully use and read medical data displays (Richardson paragraphs 0004, 0005).

(Ans. 5.)

Appellant argues that

Crawford, Jr. shows (FIG. 4), icons (identified by text) and range indicating icons (with numeric values). Jung Richardson shows icons for selecting symptoms. Neither reference provides any teaching or suggestion of "the processor programmed, responsive to at least some of the determined range relationships to presents on the display range indicating icons indicative of the relationships where each range indicating icon is displayed directly adjacent a corresponding physiological parameter identifying icon and wherein the range indicating icons and parameter identifying icons are devoid of numbers or text labels" of claim 12 or the comparable features of claims 22 or 26.

(App. Br. 10.)

Appellant further argues that

If the numbers were to be removed from the Crawford, Jr. displays, the removal of those numbers (as under the claimed invention) would render the Crawford, Jr. displays unsatisfactory for its intended purpose of quantitatively indicating the scale of a health care threat to a physician or other health care provider.

(*Id.* at 11.)

Appellant contends that

Even assuming *arguendo* that Crawford, Jr. and Jung Richardson did provide some teaching of the use of physiological parameter indicating icons and range indicating icons that are devoid of numbers and text (which they don't), there is still another reason why the combination is improper. The reason (on a first level) is that none of the cited references are directed to a device for use by a patient. On another level, the change would render Crawford, Jr. unsatisfactory for its intended purpose.

(*Id.* at 14.)

The issue is: Does the cited prior support the Examiner's conclusion that the claimed subject matter is obvious?

PRINCIPLES OF LAW

“In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant.” *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed.

Cir. 1993) (citations omitted). In order to determine whether a prima facie case of obviousness has been established, we consider the factors set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966): (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the relevant art; and (4) objective evidence of nonobviousness, if present.

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

In making our determination, we apply the preponderance of the evidence standard. *See, e.g., Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

ANALYSIS

We agree with the Examiner’s fact finding, statement of the rejection and responses to Appellant’s arguments as set forth in the Answer. We find that the Examiner has provided evidence to support a prima facie case of obviousness. We affirm the rejection for the reasons outlined by the Examiner in the Answer, and of record. We find that the Appellant has failed to rebut the Examiner’s prima facie case of obviousness with a preponderance of the evidence.

CONCLUSION OF LAW

The cited references support the Examiner’s obviousness rejection and the rejection is affirmed.

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Application 11/200,683

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

cdc