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90/010,751	11/30/2009	7,542,878 B2	14645-4	3683

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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER

WEST, JEFFREY R

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PAPER

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/706,541	02/16/2010	Reuven Nanikashvili	14645-3	1860
757	7590	01/22/2013	EXAMINER	
BRINKS HOFER GILSON & LIONE			WEST, JEFFREY R	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARD GUARD SCIENTIFIC SURVIVAL LTD. Appellant

Appeal 2012-010812
Application 12/706,541
Reexamination Control 90/010,751
US Patent. No. 7,542,878 B2
Technology Center 3900

Before, RICHARD M. LEBOVITZ, MICHAEL R. ZECHER, and
JENNIFER S. BISK *Administrative Patent Judges.*

LEBOVITZ, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal by the Patent Owner from the Patent Examiner's decision to reject pending claims 1-37 in an *ex parte* reexamination of U.S. Patent No. 7,542,878. The Board's jurisdiction for this appeal is under 35 U.S.C. §§ 6(b) and 134. We affirm-in-part.

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STATEMENT OF CASE

This is an appeal from a merged reissue and ex parte reexamination of U.S. Patent No. 7,542,878 (hereinafter, “the ‘878 patent”), which issued June 2, 2009. The Patent Owner is Card Guard Scientific Survival Ltd. App. Br. 2. A “Request for Ex Parte Reexamination” was filed by a Third-Party Requester on November 30, 2009 pursuant to 35 U.S.C. §§ 302-307 and 37 C.F.R. § 1.510. A reissue application of the ‘878 patent was filed February 16, 2010. The ex parte reexamination and reissue application were subsequently merged into one proceeding. Decision to Merge Reissue and Ex Parte Reexamination Proceedings, mailed June 4, 2010. An oral hearing was held November 28, 2012. A transcript of the hearing will be entered into the record in due course.

The original patent has 30 claims. Claims 31-37 were added during the reexamination proceeding. All of the claims stand rejected by the Patent Examiner over prior art. Patent Owner, who is also the Appellant in this appeal, appeals from the Examiner’s final rejection of all the claims. The claims are directed to a personal health monitor that comprises a physiological data input device and a multi-purpose personal data accessory. There are also pending method claims involving the use of the health monitor. According to the ‘878 patent, the device is used to monitor the health of a person. ‘878 patent, col. 5, ll. 5-9. In preferred embodiments, the multi-purpose personal data accessory is a cellular phone. *Id.* at col. 5, ll. 10-14. For example, physiological data, such as heart and blood information, can be collected by an input device and then sends it to a cellular phone which processes the data and then transmits the processed data to a remote medical center.

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Related cases

Inter parte reexamination 95/001,312 (Appeal No. 2012-012494) is currently pending. This case has been concurrently decided with this appeal.

This appeal is also related to the litigation captioned *Lifewatch, Inc. v. Medicomp, Inc.*, Case No. 6:09-cv-1909-31DAB (M.D. Fla.), currently stayed.

Grounds of rejection

The claims stand rejected as follows:

1. Claims 1-4, 8-12, 19-22, 25-27, 31, and 34-37 as anticipated under 35 U.S.C. § 102 by Davis.¹
2. Claims 1-4, 8, 10-12, 15, 19- 22, 27, 31, 34, and 36 as anticipated under 35 U.S.C. § 102(e) by Rohde.²
3. Claim 1, 2, 4, 10, 12, 15, 19, 20, 22, 27, 31, 34, and 36 as anticipated under 35 U.S.C. § 102(e) by Albert.³
4. Claims 5, 13, 14, and 23 as obvious under 35 U.S.C. § 103(a) over Davis in view of Richter.⁴
5. Claim 6 as obvious under 35 U.S.C. § 103(a) over Davis in view of Crowe.⁵
6. Claim 7 and 24 as obvious under 35 U.S.C. § 103(a) over Davis in view of Groff.⁶

¹ Charles L. Davis et al., U.S. 5,544,661 (Aug. 13, 1996).

² Mitchell M. Rohde, U.S. 5,876,351 (Mar. 2, 1999).

³ David E. Albert et al., U.S. 5,735,285 (Apr. 7, 1998).

⁴ William H. Richter et al., U.S. 5,581,369 (Dec. 3, 1996).

⁵ Louis Michael Crowe et al., U.S. 7,257,448 B2 (Aug. 14, 2007).

⁶ Clarence P. Groff et al., U.S. 6,102,856 (Aug. 15, 2000).

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7. Claim 16 and 28-30 as obvious under 35 U.S.C. § 103(a) over Davis in view of Richardson.⁷
8. Claim 17 as obvious under 35 U.S.C. § 103(a) over Davis in view of Flach.⁸
9. Claims 18, 32, and 33 as obvious under 35 U.S.C. § 103(a) over Davis in view of Evanyk.⁹
10. Claims 5, 13, 14, and 23 as obvious under 35 U.S.C. § 103(a) over Rohde in view of Righter.
11. Claim 6 as obvious under 35 U.S.C. § 103(a) over Rohde in view of Crowe.
12. Claims 7 and 24 as obvious under 35 U.S.C. § 103(a) over Rohde in view of Groff.
13. Claims 9, 26, 35, and 37 as obvious under 35 U.S.C. § 103(a) over Rohde in view of Davis.
14. Claims 16 and 28-30 as obvious under 35 U.S.C. § 103(a) over Rohde in view of Richardson.
15. Claim 17 as obvious under 35 U.S.C. § 103(a) over Rohde in view Flach.
16. Claims 18, 32, and 33 as obvious under 35 U.S.C. § 103(a) over Rohde in view of Evanyk.
17. Claims 5, 13, 14, and 23 as obvious under 35 U.S.C. § 103(a) over Albert in view of Righter.
18. Claim 6 as obvious under 35 U.S.C. § 103(a) over Albert in view of Crowe.

⁷ J. Jeffrey Richardson et al., U.S. 5,976,083 (Nov. 2, 1999).

⁸ Terry E. Flach et al., U.S. 5,748,103 (May 5, 1998).

⁹ Shane Walter Evanyk et al., U.S. 2004/0225199 A1 (Nov. 11, 2004).

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20. Claims 35 and 37 as obvious under 35 U.S.C. § 103(a) over Albert in view of Davis.

CLAIMS

The following claims are representative (underlining and brackets indicate amendments relate to the original claim):

1. A personal health monitor comprising: a physiological data input device operative to gather physiological data; and a multi-purpose personal data accessory, whereas the multipurpose personal data accessory is adapted to execute health monitoring software such as to enable the multi-purpose personal data accessory to receive the physiological data, process the physiological data to provide processed physiological data and control a long range transmission of the processed physiological data to a remote entity.

19. A method for health monitoring, comprising: gathering physiological data, by a physiological data input device; providing the physiological data to a multi-purpose personal data accessory; executing health monitoring software, by the multi-purpose personal data accessory to process the physiological data to provide processed physiological data; and controlling long range transmission of [[transmitting]]the processed physiological data.

CLAIM INTERPRETATION

Before a claim can be compared to the prior art, it must be properly interpreted. We therefore begin with claim interpretation. During reexamination, the PTO must give claims their broadest reasonable construction consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1259 (Fed. Cir. 2010).

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- “multi-purpose personal data accessory”

“Multi-purpose personal data accessory” is not explicitly defined in the written description of the ‘878 Patent. However, there is guidance in the patent specification as to its meaning.

The ‘878 patent describes several examples of multi-purpose personal data accessories, including a cellular phone, a hand-held device, and a palm computer. ‘838 Patent, col. 1, ll. 26-28; col. 4, ll. 32-35; col. 5, ll. 14-18. The personal data accessory is described in the “Summary of the Invention” as “adapted to execute health monitoring software such as to enable the personal data accessory to receive the physiological data,” a function which is also expressly ascribed to the device in independent claims 1 and 34. ‘838 Patent, col. 4, ll. 35-38. Similar language is also in claim 19. The claims also explicitly require the personal data accessory to process physiological data. The latter functions are what appear to differentiate the claimed multi-purpose personal data accessory from prior art cellular phones and other prior art personal data devices. *Id.* at col. 5, ll. 31-34.

The ‘878 patent does not define “multi-purpose.” However, in view of the disclosure in the patent of cellular phones and palm computers as multi-purpose devices, we interpret it to mean that the claimed device has the functions of a prior art cellular phone or handheld computer, but also is enabled to execute a health monitoring function, including receiving and processing physiological data.

As explained below, the ability of the multi-purpose personal data accessory to execute the health monitoring software is described in the ‘878

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Patent as a function of the data accessory hardware, itself. In distinguishing, the invention from the prior art, the '878 Patent acknowledges that “[v]arious methods and devices for monitoring the health of a person are known in the art.” ‘878 Patent, col. 3, ll. 44-46. Such prior art devices are characterized in the “Background of the Invention” as requiring “special” and “dedicated” hardware. *Id.* at col. 3, ll. 45-50. The ‘878 invention is consistently described as being enabled to perform its health monitoring function “without any addition of complex hardware, such as additional processors.” *Id.* at col. 5, ll. 13-14. The illustrative examples in the ‘878 Patent are of a self-contained cellular phone which is enabled to execute health monitoring software. *Id.* at Figs. 3-6, 8, 10, and 11; col. 6, ll. 30-33, 39-42; col. 8, ll. 41-47; col. 10, ll. 11-13. In other words, the phrase “execute . . . health monitoring software” by the multi-purpose personal data accessory as recited in claims 1 and 19 is reasonably interpreted in view of the ‘878 Patent to mean that the software is carried out by the hardware of the data accessory.

In sum, we interpret the claimed multi-purpose personal data accessory to be a device which is adapted to execute the claimed health monitoring function using hardware, such as a processor, and which is not solely devoted to performing the health monitoring function. That is, the multi-purpose personal data accessory is not “dedicated” to a single purpose or function, but has a function other than health monitoring, such as a function conventionally available on a cellular phone or palm computer.

- “adapted” to “control a long range transmission of the processed physiological data to a remote entity”

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Claims 1, 34, and 35 require the multi-purpose personal data accessory to be “adapted” to “control a long range transmission of the processed physiological data to a remote entity.” We interpret this to mean that the data accessory, itself, controls the data transmission.

The ‘878 Patent describes the use of a multi-purpose personal data accessory comprising a long-range transmitter to transmit information to remote stations. For example, with respect to a cellular phone, the ‘878 Patent teaches that “cellular phone 210 is capable of determining whether to transmit the processed physiological data, to transmit a portion of the data or not to transmit it at all.” ‘878 Patent, col. 7, ll. 54-56. The patent also describes a mode in which the device continuously captures physiological data and transmits it automatically to the remote station. *Id.* at col. 8, ll. 33-38. In other words, the transmission of data is controlled by the phone, without intervention by a person, consistent with the ordinary meaning of “control . . . to exercise restraining or directing influence over” or “to have power over.”¹⁰

With respect to long range transmission, the ‘878 Patent discloses various examples of wireless networks for long-range transmission and the internet. ‘878 Patent, col. 7, ll. 57-59; col. 8, ll. 45-50. However, we do not construe the claims to be limited to these modes of transmission.

¹⁰ <http://www.merriam-webster.com/dictionary/control>

DAVIS REJECTIONS

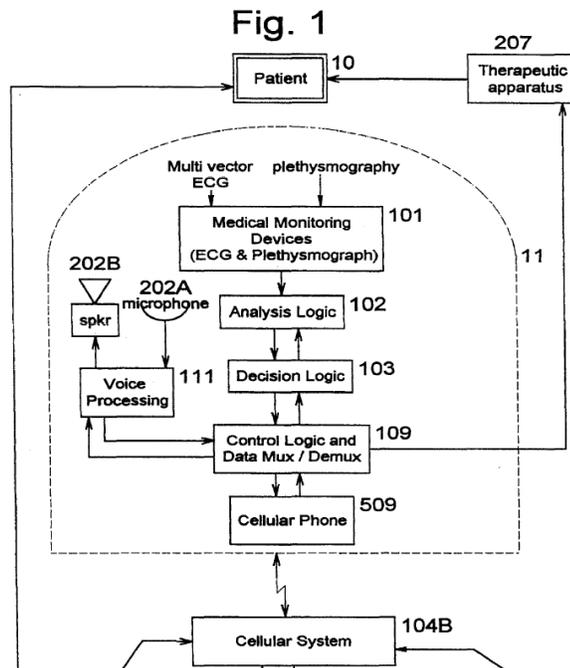
Rejection 1. Claims 1-4, 8-12, 19-22, 25-27, 31, and 34-37 stand rejected under 35 U.S.C. § 102(b) over Davis.

Findings of Fact (“FF”)

FF1 Davis describes “a method and apparatus for monitoring the physical condition of a patient and for automatically notifying a central monitor if the patient’s condition requires attention.” Davis, col. 1, ll. 5-10.

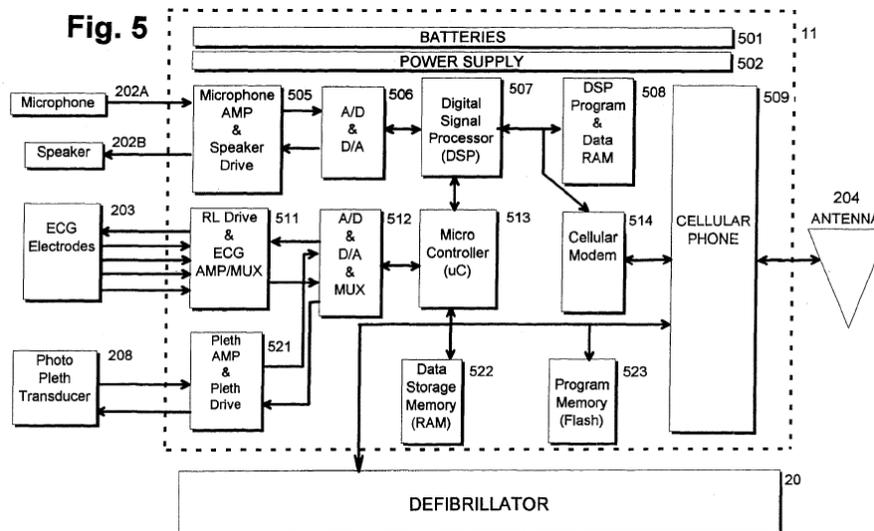
FF2 Davis describes a portable device which comprises “an expert system for determining if a pre-established critical parameter set has been exceeded; and a wireless communication device for automatically contacting the central station via a public cellular phone network when the critical parameter set has been exceeded.” Davis, col. 1, l. 64 to col. 2, l. 5.

FF3 A preferred embodiment is a cellular phone unit 11 as shown in Figure 1. Davis, col. 2, ll. 57-67. Figure 1 is reproduced below:



FF4 Figure 1, above, shows device 11 interconnected with a patient 10 and cellular system 104B. The device 11 comprises an “analysis logic 102” which is described as “a programmed microprocessor which can perform a wide variety of analysis.” Davis, col. 3, ll. 2-4. Davis teaches that the “output of the analysis logic 102 goes to decision logic 103 which compares the patient’s data to certain preset parameters. If the patient’s data is outside the preset parameters, cellular phone 509 is activated by controller logic 109.” Davis, col. 3, ll. 1-7.

FF5 Figure 5, reproduced below, is an overall block diagram of the monitoring, processing and communication unit 11 which is worn by the patient. Davis, col. 4, ll. 22-24



The figure, reproduced above, is described as having the following features:

FF6 “The central components of unit 11 include digital signal processor 507, programmable micro controller 513, DSP program and data

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ram 508, data storage memory 522 and control program memory 523.” Davis, col. 4, ll. 27-31.

FF7

The details of the cardiac measurement and analysis algorithm operations (block 932) are shown in FIG. 13 and 14. It is noted that all of the operations shown in FIGS. 13 and 14 are controlled by stored programs and performed by digital signal processor 507 and microcontroller 513.

Davis, col. 7, ll. 45-50.

Discussion

The issue in this rejection is whether Davis’s device 11 meets the claimed limitations of a “multi-purpose personal data accessory” which “execute[s] health monitoring software” as those terms would be interpreted by one of ordinary skill in the art in light of the ‘878 patent. We have construed the claimed multi-purpose personal data accessory to be a device which is capable of executing health monitoring software *without* using additional hardware. In other words, the health monitoring software is executed by hardware in the multi-purpose personal data accessory, which also performs other functions associated with the data accessory.

Davis describes specific processors, 102, 103, 507, and 513, who’s only disclosed function is to monitor the health of the patient wearing the device. FF4, FF6, & FF7. The processors can therefore be characterized as hardware “dedicated” to health monitoring. As already discussed, the ‘878 Patent specifically distinguishes its invention from health monitoring devices that comprise additional processors and hardware dedicated only to health care monitoring and cuts against the Davis device as being “multi-purpose.”

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FF8

Various methods and devices for monitoring the health of a person are known in the art. They include special hardware for gathering and processing physiological data and a wireless device utilizes for transmitting the gathered information. The special hardware is much less sophisticated and less efficient as the hardware of cellular phones. The development of dedicated hardware is usually costly.

‘878 Patent, col. 3, ll. 44-50.

FF9

The following description also refers to a cellular phone that can be provided with health monitoring software that enables the cellular phone to process physiological data, and especially without any addition of complex hardware, such as additional processors. It is noted that the invention can be applied to other multi-task and/or multi-purpose accessories, especially personal data accessories (PDAs) other than [sic] cellular phones that in turn may include palm-computers and the like.

‘878 Patent, col. 5, ll. 10-18.

Davis describes a device with a cellular phone 509 and separate hardware to process the physiological data on the patient’s physical condition. Such a device is the type of health monitor which the ‘878 Patent expressly characterizes as prior art. FF8. Consistently, the illustrative examples in the ‘878 Patent are drawn to a cellular phone which executes the health monitoring software without recourse to additional special hardware as described by Davis. In view of these specific disclosures in the ‘878 Patent, it would be unreasonable to read “multi-purpose data accessory device” with the claimed software execution function to cover Davis’s device which contains a

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separate processor “to execute the health monitoring software” devoted to this purpose and no other.

Our analysis is consistent with *In re Abbott Diabetes Care Inc.*, 696 F.3d 1142, 1150 (Fed. Cir. 2012), in which disparaging remarks in the patent specification with respect to a certain structural feature of a prior art device, coupled with the finding that every embodiment in the specification lacked such a structure, was sufficient basis to interpret the claim language to exclude the structural feature.

Independent claims 1, 19, 34, and 35 each require that the multi-purpose personal data accessory execute the health monitoring software. As this limitation is not met by Davis, we reverse the rejection of these claims and the claims which depend upon them. Consequently, we reverse the rejection of claims 1-4, 8-12, 19-22, 25-27, 31, and 34-37 as anticipated by Davis.

Rejections 4-9. The claims stand rejected as obvious in view of Davis and additionally cited secondary publications. The Examiner did not provide an explanation as to how the additionally cited secondary publications make up for the deficiency in Davis. Consequently, we are compelled to reverse Rejections 4-9, covering claims 5-7, 13, 14, 16-18, 23, 24, 28-30, 32, and 33.

ROHDE REJECTIONS

Rejection 2. Claims 1-4, 8, 10-12, 15, 19-22, 27, 31, 34, and 36 stand rejected as anticipated under 35 U.S.C. § 102(e) by Rohde.

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Claims 1-4, 8, 10-12, 15, 31, and 34

Rohde describes a portable modular diagnostic medical device. The medical device is “based on a portable multipurpose computerized platform, such as those designed primarily for playing video games.” Rohde, Abstract. “In a preferred embodiment, the platform is a Nintendo Gameboy [sic] video game device, and the medical component is a cartridge that plugs into the Gameboy [sic] device.” *Id.* at col. 3, ll. 7-10. The Examiner found that Rohde describes all the features of the claimed multi-purpose personal data accessory.

With respect the claimed limitation of “control a long range transmission of the processed physiological data to a remote entity” of claim 1, the Examiner found this met by the following disclosure:

FF10

The clinician is able to select an ECG signal from any of a number of different leads. Outputting of the signal via the serial port permits the acquired data to be sent via cable to a local laptop computer or smart modem. Outputting of the signal on the speaker or through the headphones may enhance data visualization for the clinician; the speaker can also be used as an acoustic modem to transmit the signal from a remote location to a hospital via a normal phone connection.

Rohde, col. 6, ll. 43-51

Patent Owner contends the Rohde does not describe “long-range transmission” of data or “control” of long range transmission as recited in claim 1. App. Br. 22-24.

We agree with Patent Owner that the Examiner did not establish that Rohde’s Game Boy[®] controls long-range transmission of processed

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physiological data. We construed the latter phrase to mean that the transmission of data is controlled by the multi-purpose personal data accessory, without intervention by a person. Rohde does not expressly describe this feature. According to Rohde, the acquired physiological data is sent to a “smart modem” or by an “acoustic modem” to “a remote location to a hospital via a normal phone connection.” Rohde, col. 6, ll. 43-51. The Examiner did not provide evidence in either case that the transmission by the modems through the phone connection was controlled by the Game Boy[®] as we have interpreted “control a long range transmission” to require. Answer 58. Consequently, we conclude that the Examiner’s decision not to adopt the anticipation rejection of claims 1-4, 8, 10-12, 15, 31, and 34 is not supported by a preponderance of the evidence. We reverse the Examiner’s determination with respect these claims.

Claims 19-22, 27, and 36

Independent claim 19 differs from claim 1 in not requiring that the long range transmission be controlled by the multi-purpose personnel data accessory. Claim 19 recites “controlling long range transmission of the physiological data,” but it does not specify how the control is accomplished. Thus, even if the subject or a clinician controls the delivery of the data, this meets the claimed limitation.¹¹

¹¹ Claim 31, which depends on claim 19, in contrast, specifically requires that the multi-purpose device control the long range transmission of the processed data (“wherein transmitting the processed physiological data comprises

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Rohde describes transmitting physiological data through a phone connection. Rohde, col. 6, ll. 43-51. Patent Owner takes the position that the long range transmission must be wireless. Although Patent Owner provided evidence that long range transmission included wireless cellular communications, including citation to a supplemental declaration by Michael K. Dempsey (App. Br. 21-22), such evidence does not exclude a phone line from accomplishing long range transmission of data. As discussed on page 8 of the Claim Interpretation section, examples of wireless networks for long range transmission are described, but so is the internet, which is not necessarily wireless. In sum, there is insufficient evidence that one of ordinary skill in the art would have construed “long range transmission” to be limited to wireless transmission.

Patent Owner also contends that the Rohde’s Game Boy[®] is not a multi-purpose personal data accessory because it is for a single purpose which is dictated by the cartridge installed in the Game Boy[®]. App. Br. 20-21. This argument is not persuasive. While the Game Boy[®] is a preferred embodiment described by Rohde, Rohde’s disclosure it not limited to this device. Rohde expressly describes “multipurpose” devices:

FF11

This application is intended to cover any adaptations or variations of the present invention. For example, the invention has been shown in relation to a NINTENDO GAMEBOY device. However, any portable handheld multipurpose computerized

controlling a long range transmission of the processed physiological data, by the multi-purpose personal data accessory.”

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platform conforming to the claimed invention is amenable, such as a personal digital assistant (PDA).

Rohde, col. 16, ll. 47-53.

In sum, based on the totality of the evidence, we conclude that a preponderance of the evidence supports the Examiner's determination that claims 19-22, 27, and 36 are anticipated by Rohde. We affirm the rejection with respect to these claims.

Rejections 10-16. The Examiner set forth additional rejections of the claims as obvious in view of Rohde and various secondary references.

With respect to claims 5-7, 9, 13, 14, 16-18, 32, 33, and 35, the Examiner did not explain how the additionally cited secondary publications make up for the deficiency in Rohde. Consequently, we are compelled to reverse Rejections 10-16 with respect to these claims.

Claims 23, 24, 26, 28-30, and 37 depend on claim 19, which we found anticipated by Rohde. Patent Owner did not provide any rebuttal evidence or arguments as to why these claims are not obvious in view of the additionally cited references. Consequently, we affirm the rejections with respect to these claims for the reasons set forth by the Examiner.

ALBERT REJECTIONS

Findings of Fact

FF12 Albert describes an apparatus and method for monitoring a patient's electrocardiogram (ECG):

The present invention relates to an improved communication system for conveying ECG data or other biomedical waveform

data more directly between the patient and an attending doctor's location. The patient employs a Heart Card-type of device that converts the patient's ECG signal into a frequency modulated audio signal that may then be analyzed by audio inputting via a telephone system to a selected hand-held computer device that functions to digitize, record and demodulate the frequency modulated signal for presentation and viewing on the hand-held computer display screen.

Albert, col. 2, ll. 5-15.

FF13

The hand-held computer is one with integrated microphone, audio analog to digital converter, digital to analog converter, speaker, and central processing unit with memory for performing various computational data storage and signal processing tasks.

Albert, col. 2, ll. 25-29.

FF14 Figure 1, reproduced below, show's Albert's ECH monitoring system:

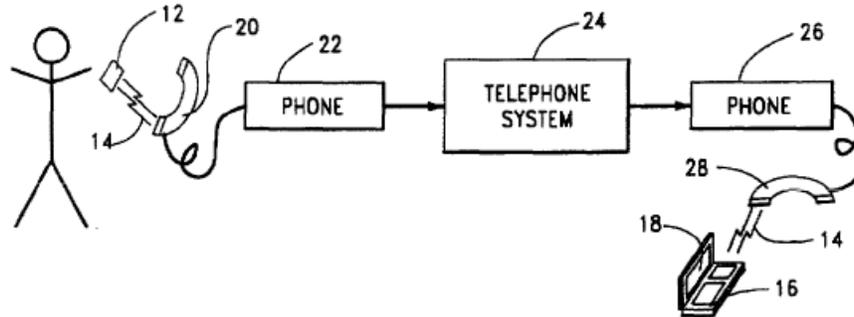
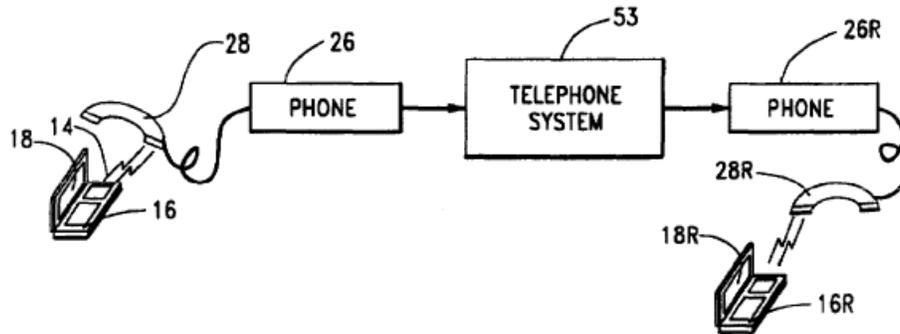


Figure 1 shows Heart Card 12 disposed on patient for detecting and recording an ECG, audio transmission of the signal into a phone which is relayed through the phone system, and then played into the palmtop computer.

Albert, col. 3, ll. 9-41.

FF15 Figure 3 is reproduced below:



As shown in FIG. 3, the original receiving phone 26 and handset 28 may be used to relay the data via telephone system link 53 to yet another phone 26R and handset 28R as located at another remote location. Such further transfer may be necessitated by a need for second opinion or additional comparison data. The hand-held computer 16 may be operated to emit the audible ECG data from handset 18 [sic, 28] for transmission via telephone interconnect 53 to the remote phone 26R whereupon handset 28R provides audible input to another hand-held computer 16R for processing and display of the ECG data.

Albert, col. 4, ll. 8-18.

Rejection 3. Claims 1, 2, 4, 10, 12, 15, 19, 20, 22, 27, 31, 34, and 36 stand rejected as anticipated under 35 U.S.C. § 102(e) by Albert.

The Examiner found that Albert described all the elements of the claimed personal health monitor. Answer 13-14. For example, Albert teaches that physiological data collected from a physiological input device (“Heart Card 12”) can be transmitted to a multi-purpose personal data accessory (“hand-held computer”) (FF12 & FF14), where the latter can perform data processing tasks (FF13). The latter meets the limitations of claim 1 of:

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multipurpose personal data accessory adapted to execute health monitoring software such as to enable the multi-purpose personal data accessory to receive the physiological data, process the physiological data to provide processed physiological data.

In Figure 3, the hand-held computer 16 is shown as transmitting the processed physiological data to another remote location, using a phone and telephone system. FF15. The Examiner found that this disclosure met the claimed limitation of “control a long range transmission of the processed physiological data to a remote entity.” Answer 14.

Claims 1, 2, 4, 10, 12, 15, 31, and 34

We interpreted the phrase “control a long range transmission of the processed physiological data to a remote entity” as recited in claim 1 to require that the device, without intervention from a person, transmit the data to the remote location. Patent Owner contends that Albert does not meet this limitation because:

Albert describes using a telephone—not the hand-held computer 16—to transmit data. Consequently, the hand-held computer 16 is not adapted to control long range transmission of processed physiological data. Like Rohde, Albert requires a person to operate the local telephone, to achieve any sort of transmission beyond the palmtop computer 16.

App. Br. 28.

The Examiner responded that the local telephone handset is employed in the long range transmission and, therefore, long range transmission itself is controlled by the multipurpose palmtop computer. Answer 63.

The Examiner’s argument is not persuasive. As discussed by Patent Owner and supported by a preponderance of the evidence, Albert teaches that

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audible ECG data is relayed from the hand-held computer 16 to the handset 28, which in turn transmits the data through a telephone interconnect. FF12 & FF14. Albert does not provide information on how the handset and telephone interconnect are operated, so there is insufficient information to support the Examiner's conclusion that it is the palmtop computer which performs the control, rather than a person dialing a phone, or some other device or means. For this reason, we conclude that the Examiner did not establish by a preponderance of the evidence that Albert anticipates claims 1 and 34, and dependents claim 2, 4, 10, 12, 15, and 31. We reverse the rejection with respect to these claims.

Claims 19, 20, 22, 27, 36

As discussed already, claim 19 does not specify that the multi-purpose personal data accessory performs the claimed step of "controlling long range transmission of the processed physiological data." Thus, in contrast to claim 1, the evidence supports the Examiner's finding that this step is taught by Figure 3 of Albert. FF15. We have considered Patent Owner's arguments, but found them unavailing because Patent Owner did not address Albert's disclosure at column 4, lines 4-18 (FF15), which the Examiner found to be anticipatory. We thus affirm the rejection of claims 19, 20, 22, 27, and 36 as anticipated by Albert.

Rejections 17-20. The Examiner set forth additional rejections of the claims as obvious in view of Albert and various secondary references.

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With respect to claims 5, 6, 13, 14, and 35, the Examiner did not explain how the additionally cited secondary publications make up for the deficiency in Davis. Consequently, we are compelled to reverse Rejections 17-20 with respect to these claims.

Claims 23 and 37 depend on claim 19, which we found anticipated by Albert. Patent Owner did not provide any rebuttal evidence or arguments as to why these claims are not obvious in view of the additionally cited references. Consequently, we affirm the rejections of these claims for the reasons set forth by the Examiner.

SUMMARY

The disposition of Rejections 1-20 is as follows:

Rejection 1 of claims 1-4, 8-12, 19-22, 25-27, 31, and 34-37 as anticipated by Davis is reversed.

Rejection 2 of claims 1-4, 8, 10-12, 15, 31, and 34 as anticipated by Rohde is reversed.

Rejection 2 of claims 19-22, 27, and 36 as anticipated by Rohde is affirmed.

Rejection 3 of claims 1, 2, 4, 10, 12, 15, 31, and 34 as anticipated by Albert is reversed.

Rejection 3 of claims 19, 20, 22, 27, and 36 as anticipated by Albert is affirmed.

Rejections 4-9 of claims 5-7, 13, 14, 16-18, 23, 24, 28-30, 32, and 33 as obvious in view of Davis and secondary references are reversed.

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Rejections 10-16 of claims 5-7, 9, 13, 14, 16-18, 32, 33, and 35 as obvious in view of Rohde and secondary references are reversed.

Rejections 10-16 of claims 23, 24, 26, 28-30, and 37 as obvious in view of Rohde and secondary references are affirmed.

Rejections 17-20 of claims 5, 6, 13, 14, and 35 as obvious in view of Albert and secondary references are reversed.

Rejections 17-20 of claims 23 and 27 as obvious in view of Albert and secondary references are affirmed.

TIME PERIOD FOR RESPONSE

Requests for extensions of time in this ex parte reexamination proceeding are governed by 37 C.F.R. § 1.550(c). See 37 C.F.R. § 41.50(f).

AFFIRMED-IN-PART

ack

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