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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/803,574	06/29/2010	Olivier Chossat	COD 5198USNP	2185
	7590 10/31/2016			
Cheryl F. Cohen, LLC 2409 Church Road Cherry Hill, NJ 08002			EXAMINER SEOH, MINNAH L	
			ART UNIT	PAPER NUMBER
			3686	
			MAIL DATE	DELIVERY MODE
			10/31/2016	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte OLIVIER CHOSSAT and TIMOTHY FLYNN

Appeal 2014-005501
Application 12/803,574¹
Technology Center 3600

Before, JOSEPH A. FISCHETTI, JAMES A. WORTH, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–23. We have jurisdiction under 35 U.S.C. § 6(b).

Claim 1, reproduced below, is representative of the subject matter on appeal.

¹ Appellants identify Codman Neuro Sciences Sàrl as the real party in interest. Br. 2.

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1. A method for minimizing improper dosage of a drug admixture dispensed from a drug infusion delivery system, the drug admixture including a single primary drug component and at least one secondary drug component, comprising the steps of:

for each drug component in the drug admixture, receiving drug component admixture library data including a name of the drug component along with its dosage unit, a maximum dose warning level and a maximum concentration warning level;

storing in a first memory device the received drug component admixture library data for each drug component in the drug admixture;

receiving (i) a concentration for each of the single primary drug component and the at least one secondary drug component; and (ii) a dose setting of only the primary drug component;

automatically determining using a processor, a calculated dose of each of the at least one secondary drug component based on the received dose setting for only the primary drug component and the concentration for that secondary drug component;

generating an alert when: (i) the received dose setting of the primary drug component or calculated dose setting of the at least one secondary drug component exceeds the dose warning level for that drug component stored in the first memory device; or (ii) the received concentration of the primary drug component or the at least one secondary drug component exceeds the concentration warning level for that drug component stored in the first memory device.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Villegas US 2009/0043290 Feb. 12, 2000

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The following rejection is before us for review.

Claim 1–23 are rejected under 35 USC 102(b) as being anticipated by Villegas.

ANALYSIS

35 U.S.C. § 102(b) REJECTION

Each of independent Claims 1, 9 and 17 recites, in pertinent part, the step of,

“...automatically determining using a processor, a calculated dose of each of the at least one secondary drug component based on the received dose setting for only the primary drug component and the concentration for that secondary drug component;... .”

The Examiner found that this limitation is disclosed by Villegas at paragraph 43. (Final Act. 3).

Appellants argue,

Rather than receiving the dose setting of the secondary drug component as disclosed in Villegas et al., claim 1 is further distinguishable over the prior art reference in that it expressly calls for calculating such parameter. Specifically, claim 1 calls for the step of "automatically determining using a processor, a calculated dose of each of the at least one secondary drug component based on the received dose setting for only the primary drug component and the concentration for that secondary drug component....

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To the contrary, there is no calculation or determination of any dose component, instead the only doses are simply input, entered or selected by the user/clinician in Villegas et al. In rejecting claim 1, the Examiner asserts that this claimed automatically determining step is taught by paragraph [0043] of Villegas et al. which is reproduced below:

In an example embodiment, the programmer 100a is configured to generate the graphical user interface 100 such that the Total Daily Dose (for each Medication) shown in the Base Dose display area 1102 can be adjusted by entering new dosages. In another example embodiment, the plot generated in the Daily Profile display area 1104 is automatically adjusted depending upon the dosages entered into the fields in the Total Daily Dose column. In an example embodiment, an edit button 1106 in the Daily Profile display area 1104, when actuated, permits a user to edit the daily profile. In another example embodiment, the Total Daily Dose value for each Medication is automatically adjusted depending upon changes made to the daily profile

Rather than calculating the dosage, the paragraph above from Villegas et al. clearly discloses simply entering a new dosage. Once a new dosage has been entered, its graphical interface may thereafter be automatically adjusted in the profile display area to reflect that of the newly entered dosage value. However, such updating of the graphical representation to correspond with the newly entered dosage value, is not analogous to calculating a dosage value.
(Appeal Br. 9–10, emphasis omitted)

We agree with Appellants. The independent claims specifically require that the dose be automatically calculated by a determining step. But, it is clear from Villegas in paragraph 43 that the disclosed dosages are

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entered by the user. The system in Villegas discloses automatically adjusting the Total Daily Dose by entering new dosages. (*See* para. 43). But, the claims require automatic determining of the calculated secondary drug component based on the received dose setting for only the primary drug component. Thus, while the claims do allow for manual entering of the *primary* drug component, the claims require that the calculated dosage of the *secondary* drug component be automatically determined. Since Villegas discloses entering of dosages “in the BASE DOSE display area 1102” (*id.*), we find that this means that all component dosages are manually entered to effect the value displayed at Total Daily Dose. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

Because claims 2–8, 10–16, and 18–23 depend from one of claims 1, 9 and 17 and since we cannot sustain the rejection of claims 1, 9, and 17, the rejection of claims 2–8, 10–16, and 18–23 likewise cannot be sustained.

CONCLUSIONS OF LAW

We conclude the Examiner erred in rejecting claims 1–23 under 35 U.S.C. § 102(b).

DECISION

The decision of the Examiner to reject claims 1–23 is reversed.

REVERSED.