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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CARL D. DVORAK, BRIAN M. WEISBERGER,
MATTHEW D. SIDNEY, JANET L. CAMPBELL,
DANIEL J. DONOGHUE, JOHN JI-HOON KIM,
BHAVIK SHAH, and LARRY G. IRWIN II

Appeal 2014-006934
Application 12/557,968¹
Technology Center 3600

Before HUBERT C. LORIN, KENNETH G. SCHOPFER and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–12. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to the Appellants, the real party in interest is Epic Systems Corporation. Appeal Br. 2.

ILLUSTRATIVE CLAIM

1. A computerized system allowing intercommunication of patients with respect to the treatment of their diseases comprising:

an electronic medical record database providing electronic medical records of a set of patients as developed by healthcare professionals, the data in electronic medical records being updated by the healthcare providers in the course of treatment of a patient informing diagnoses and recommendations;

an anonymous electronic medical record database providing a copy of the electronic medical records of the electronic medical record database wherein copying the electronic medical records includes removing patient identification from each record and linked to an anonymous identifier for each patient;

a set of terminal devices accessible to the patients allowing for the electronic exchange of information through a display and data input device;

a server system communicating between the anonymous medical record database and the terminal devices and executing the stored program contained in computer readable memory to:

(1) generate and provide unique authentication information including the anonymous identifier for the patient's electronic medical record in the electronic medical record database;

(2) associate the unique authentication information with the electronic medical record in the anonymous electronic medical database copied from the patient's electronic medical record in the electronic medical record database;

(3) allow an authenticated connection by a given patient to the server system through a terminal device and associating the connection with the anonymous identifier;

(4) permit authoring by the given patient of a patient site viewable on a terminal device incorporating medical records

from the anonymous medical record database associated with the anonymous identifier; and

(5) identifying to the given patient other patient sites for other patients having shared medical conditions according to a predetermined clustering of data of the anonymous medical record database.

REJECTION

Claims 1–12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Onuma et al. (US 2005/0236474 A1, pub. Oct. 27, 2005) (“Onuma”) and Poulin et al. (US 2009/0265316 A1, pub. Oct. 22, 2009) (“Poulin”).

FINDINGS OF FACT

We rely upon and adopt the Examiner’s findings stated in the Final Office Action at pages 3–6 and the Answer² at pages 3–5. Additional findings of fact may appear in the Analysis below.

ANALYSIS

Independent Claim 1 and Dependent Claims 2 and 7

The Appellants (Appeal Br. 13) contend that the Examiner erred in rejecting claim 1 because Poulin neither teaches nor suggests “generat[ing] and provid[ing] unique authentication information including the anonymous identifier for the patient’s electronic medical record in the electronic medical record database,” per claim 1. In so arguing, the Appellants argue that the

² The text referenced herein refers to the Examiner’s Answer dated April 2, 2014. The Examiner provided a corrected coversheet for the Answer on April 16, 2014.

claimed “authentication information” must be *stored in* the “electronic medical record.” *Id.*

Yet, claim 1 includes no such requirement and the Appellants do not indicate whatever claim language might so mandate. In addition, the Appellants’ proposed construction is contrary to the Specification, which explains that “the system-selected identification number 26 and PIN 28 *need not be contained in*” the “logical record 18” that is included in the “electronic medical records 16.” Spec. ¶¶ 19, 23 (emphasis added).

Furthermore, the Examiner’s Answer correctly finds that Poulin teaches the identified limitation. Answer 3–4 (citing Poulin ¶¶ 13–14, 20–21). In particular, Poulin describes “user authentication credentials used to selectively allow access to stored data” and “identification hashes or keys for patients and medical practitioners so as to provide a unique ID for patients and medical practitioners.” Poulin ¶ 20.

Accordingly, the Appellants’ argument is not persuasive of error in the rejection of claim 1.

With regard to dependent claims 2 and 7, the Appellants rely entirely upon the argument presented for independent claim 1. Appeal Br. 13. Therefore, the rejection of claims 1, 2, and 7 under 35 U.S.C. § 103(a) is sustained.

Dependent Claims 3–6

Claims 3–6 depend (either directly or indirectly) from claim 1 and are subject to the Appellants’ argument regarding claim 1. *See* Appeal Br. 13. As explained above, that argument is unpersuasive.

In addition, the Appellants contend that the Examiner erred in rejecting claims 3–6, because the cited prior art references do not teach or

suggest “multiple databases and thus cannot be said to teach or suggest controlling an operation based on information transferred during an anonymous copying between the databases.” *Id.* at 14.

In response, according to the Examiner, “the features upon which applicant relies (i.e., multiple databases and controlling an operation based on information transferred during an anonymous copying between the databases) are not recited in the rejected claim(s),” and, in any event, the Examiner states that Poulin discloses that an “electronic medical record database (30) copies patient identification data by de-identifying patient information” and “[t]he de-identified patient data can be transmitted to a central processor 50,” thus teaching the limitation in question. Answer 4 (citing Poulin ¶¶ 12–13, Figs. 1–2). *See also* Final Action 4 (citing Poulin ¶¶ 13–14, 21, Fig. 2).

Claim 1 — and, thus, claims 3–6, which depend therefrom (either directly or indirectly from claim 1) — requires two databases (“an electronic medical record database” and “an anonymous electronic medical record database”). However, contrary to the Appellants’ argument (Appeal Br. 14), the portions of Poulin (paragraphs 12–14, Figures 1–2) cited by the Examiner teach copying patient medical record data from one database to another. Indeed, the Appellants’ assertion is contradicted by the statement earlier in the Appeal Brief that “Poulin, as recognized by the Examiner, teaches a 2nd electronic medical database.” Appeal Br. 13 (regarding claims 1, 2, 7).

In addition, we agree with the Examiner’s characterization (*see* Answer 4) of the Appellants’ argument, to the extent that none of claims 3–6 requires controlling an operation based on information transferred during

copying between databases (*see* Appeal Br. 19–20 (Claims App.)). The Appellants do not explain how the language of claims 3–6 constitutes the requirement alleged.

Further, although the Appeal Brief (on page 14) quotes portions of claims 3–6, the Appeal Brief offers no argument directed to the quoted claim language. “A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.” 37 C.F.R. §41.37(c)(1)(iv). Further, the Appeal Brief does not address the analysis in the Final Office Action (pages 3–6) that maps the claims to identified portions of the cited prior art.

Accordingly, the Appellants’ argument is unpersuasive, such that the rejection of claims 3–6 under 35 U.S.C. § 103(a) is sustained.

*Independent Claim 8
and Dependent Claims 9, 11, and 12*

The Appellants contend that the Examiner erred in rejecting independent claim 8 because:

nothing in either Onuma or Poulin teaches or suggests multiple databases copied and anonymized as described herein. Further, nothing in either of these references teaches or suggests such an anonymized database in which anonymous medical records are linked to an anonymous identifier for each patient and an anonymous identifier for the patient’s physician.

Appeal Br. 15.

Yet, no language of claim 8 requires “multiple databases copied and anonymized” (*id.*) and the Appellants identify none. The Appellants’ discussion of claims 8, 9, 11, and 12 begins by quoting language that appears in claim 1 — *not* claim 8. *Id.* at 14–15.

As to the issue of anonymous identifiers, claim 8 recites:

an anonymous electronic medical record database including electronic medical records . . . having all information for identifying the patients removed, the records being linked to a patient anonymous identifier for each patient and a physician anonymous identifier for the patient's physician.

Appeal Br. 20–21 (Claims App.).

According to the Examiner, Poulin teaches this feature. *See* Answer 5 (citing Poulin ¶ 19 and the Examiner's discussion of claim 1, at Answer 3–4, which cites Poulin ¶¶ 13–14, 20–21).

We agree with the Examiner's finding because Poulin discloses removing information from medical records that identifies patients and physicians and creating unique identification hashes or keys for patients and physicians. Poulin ¶¶ 13, 19, 20.

With regard to dependent claims 9, 11, and 12, the Appellants rely entirely upon the arguments presented for independent claim 8. Appeal Br. 15. Therefore, the rejection of claims 8, 9, 11, and 12 under 35 U.S.C. § 103(a) is sustained.

Dependent Claim 10

Claim 10 recites: "The computerized system of claim 9, further including allowing searching based on a treatment plan."

Claim 10 depends indirectly from claim 8 and is subject to the Appellants' arguments regarding claim 8. *See* Appeal Br. 15. As explained above, those arguments are unpersuasive.

In addition, the Appellants contend that the Examiner erred in rejecting claim 10 because Onuma and Poulin neither teach nor suggest searching by a given physician of the anonymous medical record database according to search criteria entered by the

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given physician to provide a search result of patients based specifically on a treatment plan in an electronic medical record.

Id. at 16.

The Appellants' argument is unpersuasive because the Examiner correctly finds that Poulin teaches the identified limitation. Answer 5 (citing Poulin ¶¶ 4, 15–16). For example, Poulin discloses that a physician may query a database of anonymized medical records based upon “treatment for a patient . . . with a specific ailment.” Poulin ¶ 16.

The rejection of claim 10 under 35 U.S.C. § 103(a) is sustained.

DECISION

We AFFIRM the Examiner's decision rejecting claims 1–12.

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