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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/474,708	06/26/2006	Stephen J. Brown	7553.00024 / 06-0460	9254
10800	7590	11/01/2016	EXAMINER	
Maginot, Moore & Beck LLP One Indiana Square, Suite 2200 Indianapolis, IN 46204			REYES, REGINALD R	
			ART UNIT	PAPER NUMBER
			3686	
			MAIL DATE	DELIVERY MODE
			11/01/2016	PAPER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* STEPHEN J. BROWN

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Appeal 2014-007649  
Application 11/474,708  
Technology Center 3600

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Before HUBERT C. LORIN, BIBHU R. MOHANTY, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Stephen J. Brown appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 3–9, 11–22, 24–33. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE DECISION

We AFFIRM-IN-PART.

### CLAIMED INVENTION

The claimed invention relates to “self-care health monitoring” (Spec. para. 2). Claims 1, 12, and 25 are the independent claims on appeal. Claim 1, reproduced below with bracketed matter added, is illustrative of the subject matter on appeal (App. Br. 31–32, Claims App.).

1. A health monitoring system for communicating with a remote computing facility, the system comprising:

[1] a health monitoring device associated with a person being monitored, said health monitoring device configured to collect physiological data related to a health condition of the person being monitored;

[2a] a central server arranged to receive and communicate data, said central server remotely located from the person being monitored,

[2b] wherein said central server is configured to analyze health-related data corresponding to said person

[2c] and generate statistical data based on said analysis of said health-related data,

[2d] wherein said health-related data comprises said physiological data related to said health condition of the person being monitored;

[3] a programmable microprocessor-based unit associated with the person being monitored, said programmable microprocessor-based unit in signal communication with the health monitoring device and in signal communication with the central server, said programmable microprocessor-based unit (i) including a microprocessor, a multi-line display, a plurality of switches and a receptacle and (ii) configured to present information on the display to the person being monitored and provide a digital signal representative of said physiological data related to said health condition of the person being monitored, wherein said microprocessor-based unit presents to said person on said display (A) alphanumeric messages of at least one line of text, and

[3b] (B) graphs representing said statistical data;

[4] a removable memory device configured to electrically and physically connect with said programmable microprocessor-based unit via said receptacle, wherein said removable memory device comprises a program cartridge; and

[5] a computer for use by a health care professional and remotely located from said health monitoring device, said central server and said programmable microprocessor-based unit, said computer for use by a health care professional being in signal communication with the central server, wherein said computer for use by the health care professional is constructed and arranged for transmitting messages to the programmable microprocessor-based unit via the central server for presentation to the person being monitored.

#### REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

McNeight	US 4,463,250	July 31, 1984
Ruzumna	US 4,773,492	Sep. 27, 1988
Fu	US 4,803,625	Feb. 7, 1989
Chaco	US 5,465,082	Nov. 7, 1995
Leatherman	US 5,544,044	Aug. 6, 1996
Durairaj	US 7,359,993 B1	Apr. 15, 2008

1. Claims 1, 3–9, 12–22, 31, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fu, McNeight, Chaco, and Leatherman.

2. Claims 25–30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fu, Chaco, and Leatherman.

3. Claims 11 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fu, McNeight, Chaco, Leatherman, and Ruzumna.

4. Claim 33 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fu, McNeight, Chaco, Leatherman, and Durairaj.

## ANALYSIS

### *Independent claim 1*

Regarding independent claim 1, the Examiner finds limitation [4] in Fu in column 5, lines 44–52, column 6, lines 37–60, column 9, lines 20–23 (Non-Final Act. 4), and column 7, lines 56–59 (Ans. 2).

Appellant contends that “[t]he Examiner has mischaracterized Fu” because “[a] floppy disc with storage space is not a program cartridge” (App. Br. 10). Appellant argues, for the first time in the Reply Brief, that “program cartridge” “is defined at the Appellant’s specification at paragraph 16 as a device which ‘provides the software necessary (program instructions) to program the handheld microprocessor unit for operation with the microprocessor-based data management unit’” (Reply Br. 2), and that “[s]ince floppy discs can be provided which do not include program instructions, floppy discs which are program cartridges are not inherent to the system of Fu” (*id.* at 3).

We do not find Appellant’s arguments persuasive. First, claim 1 does not include a “handheld microprocessor unit” or a “microprocessor-based data management unit” so Appellant’s proffered interpretation would render the claim indefinite for lack of antecedent basis. Appellant’s argument regarding inherency does not address the actual rejection, which is based on obviousness and not anticipation.

Additionally, we agree with the Examiner that even under Appellant's proffered interpretation, Fu discloses limitation [4]. Fu at column 9, lines 20–23 discloses a routine that “loads previously stored data flags and the system state table from the disk into RAM.” We are not apprised of Examiner error because Appellant does not explain why it is unreasonable to interpret the program instructions as the data flags and system state table as taught by Fu.

We further note that Appellant's Specification suggests that program cartridges are admitted prior art. For example, paragraph 36 of Appellant's Specification discloses that “‘palm top computers’ have been introduced into the marketplace . . . include provision for programming the device by means of an insertable program card or cartridge” and paragraph 38 discusses program cartridges that are “compatible with commercially available compact video game systems, such as the system manufactured by Nintendo of America Inc. under the trademark ‘GAME BOY’.”

The Examiner finds limitation [2c] of claim 1 taught by Leatherman at column 231 lines 1–9 (Non-Final Act. 6).

Appellant disputes this finding on the grounds that “[t]here is no mention of any statistical analysis of an individual's physiological data” (App. Br. 9).

Appellant's arguments are not commensurate with the scope of the claim. Claim 1 requires a “health monitoring device configured to collect physiological data related to a health condition” and a “central server [that] is configured to analyze health-related data corresponding to said person” and “wherein said health-related data comprises said physiological data related to said health condition.” Claim 1 does not specifically require

analysis of physiological data; claim 1 requires analysis of health-related data that comprises said physiological data. Because the word “comprises” is open-ended, the “health-related data” is not limited to “said physiological data”; the “physiological data” is a subset of the “health-related data.” Accordingly, the claimed analysis of the health-related data does not necessarily include an analysis of the subset of health-related data that is physiological data.

The Examiner finds the “display” of limitation [3] of claim 1 taught by Fu at column 6 lines 37–60, column 7 lines 56–65, column 9 lines 20–23, and column 6, lines 46–48, and “graphs representing statistical data” (limitation [3b]) taught by Leatherman at column 231 lines 1–9. The Examiner finds limitation [5] of claim 1 taught by Chaco in column 22, lines 44–67 and column 23, lines 1–7 and Figure 14 (Non-Final Act. 5; Ans. 3–4).

Appellant contends that “[s]imply having a display is not the same as configuring a system to transmit statistical data generated at a central server to a remote unit and displaying the statistical data at the remote unit” (App. Br. 10). Appellant also contends that “[t]he Examiner has failed to identify any teaching in Leatherman of transmitting any results obtained at the alleged central server of Leatherman to a remote unit of one of the patient’s for display” (id.) and “there is no teaching in Chaco of transmission of a message from a remote healthcare professional computer to the central server and then to the patient's microprocessor-based unit which displays the message.”

Appellant’s arguments fail because Appellant is attacking Fu and Leatherman individually; the rejection is based on the combined teachings of the references, not on any one of them alone. *See In re Merck & Co.*, 800

F.2d 1091, 1097 (Fed. Cir. 1986) (“Nonobviousness cannot be established by attacking the references individually when the rejection is based on the teachings of a combination of references”). The Examiner relies on Fu as disclosing a central unit 20 (“central server”) and a home unit 60 (“programmable microprocessor-based unit”) that displays data (Non-Final Act. 3–4; Ans. 3), Leatherman for statistical analysis (including generating charts and graphs) (Non-Final Act. 5–6; Ans. 2–3), and Chaco for transmitting messages via a “star-type network” that includes nurse stations, a central computer, and patient stations (Non-Final Act. 5; Ans. 3–4).

Regarding the combination of references, Appellant contends that “the rationale proposed by the Examiner is not convincing” (App. Br. 13). According to Appellant, there is no motivation to make the proposed modification because it would render Fu unsatisfactory for its intended purpose (App. Br. 12–13) (citing Fu at column 3, lines 46–62).

We are not persuaded by Appellant’s argument because there is no evidence that the intended purpose of Fu is to reduce data transmission. Column 3, lines 46–62 of Fu discloses that it is advantageous to reduce the number of false alarms at the central station by adjusting the range of normal values, but that does not support the Appellant’s position; not all data transmission results in a false alarm at the central server. On the contrary, the range of normal values determines whether an alarm will be triggered.

Appellant further argues that “the patient’s microprocessor-based unit in Chaco does not have a display” (App. Br. 13) (apparently referring to patient station 210 of Chaco).

We are not persuaded by Appellant's argument because it is attacking Fu and Chaco individually. As noted above, the Examiner relies on Fu for the programmable microprocessor-based unit that displays data and relies on Chaco for the transmission of messages between stations via a "star-type network." Thus, Appellant's arguments regarding the lack of a display in patient station 210 do not apprise us of error in the Examiner's rejection.

*Independent claim 12*

Appellant provides the same arguments for claim 12 as for claim 1 (App. Br. 18). Accordingly, we sustain the rejection of claim 12 for the same reasons set forth above with respect to claim 1.

*Dependent claims 3 and 17*

Claim 3 depends from claim 1 and requires "wherein the removable memory device comprises program instructions executable by the microprocessor-based unit." Claim 17 depends from claim 12 and recites a similar limitation. The Examiner finds this limitation in Fu at column 5, lines 53–61 and Figure 2 (Non-Final Act. 6).

Appellant disputes this finding (App. Br. 15).

We have discussed that the Examiner's finding of program instructions in mass storage device 80 disclosed in Fu is supported by the evidence (*see* Fu, column 9, lines 21–23; *see also*, Fu, column 8, lines 46–65). Accordingly, we are not apprised of error in the Examiner's finding.

*Dependent claim 31*

Claim 31 depends from claim 1 and requires “wherein said programmable microprocessor-based unit comprises a hand-held unit.” The Examiner finds this limitation in Fu at column 6, lines 38–64.

Appellant contends that “Fu does not expressly disclose that the home unit 60 *is* a hand-held unit” (App. Br. 17) (emphasis added).

Appellant’s argument is not commensurate with the scope of the claim. Because the word “comprises” is open-ended, claim 31 does not require that “said programmable microprocessor-based unit” *is* “a hand-held unit.” The cited portion of Fu discloses that home unit 60 comprises a “portable keyboard 76 [that] is preferably a hand-held unit.” Accordingly, we are not apprised of error in the Examiner’s finding.

Appellant also argues that “there is no indication in Fu that the ‘limited display’ is capable of displaying graphical information” (Reply Br. 5).

We do not find Appellant’s argument persuasive because the “limited display” of portable key board 76 is not the only display shown in Figure 2, which also includes display unit 68 that is “preferably a nine inch CRT monitor” (Fu, col. 6, line 46–47). Accordingly, we are not apprised of error in the Examiner’s finding.

*Dependent claim 14*

Claim 14 depends from claim 12 and requires “wherein the receptacle is located in the health monitoring device.” The Examiner finds this limitation in Fu at column 6, lines 37–64 (Non-Final Act. 9), which discloses that “mass storage device 80 is preferably a 3.5 inch mini-floppy disc drive.”

Appellant contends that mass storage device 80 “is separate from any of the components which could reasonably be construed to be a health monitoring device” as shown in Figure 2.

Appellant’s argument is not commensurate with the scope of the claim. Claim 12 requires “a health monitoring device” and a “programmable microprocessor-based unit in signal communication with the health monitoring device.” Nothing in claim 12 or 14 requires that the “health monitoring device” is physically separate from the “programmable microprocessor-based unit.” As shown in Figure 2 of Fu, home unit 60 comprises both CPU 64 and various health monitoring devices 84, 86, and 88. Thus, home unit 60 meets both the claimed “health monitoring device” and the “programmable microprocessor-based unit in signal communication with the health monitoring device.” Because the home unit 60 includes a receptacle (disk drive), claim 14 reads on home unit 60. Accordingly, we are not apprised of error in the Examiner’s finding.

*Claims 4–9, 11, 13, 15, 16, 18–22, 24, 32 and 33*

Appellant relies on arguments presented with respect to claims 1 and 12 in contesting the rejection of dependent claims 4–9, 11, 13, 15, 16, 18–22, 24, 32 and 33 (*see* App. Br. 15, 19, 28, 29). Therefore, we sustain the rejection of claims 4–9, 11, 13, 15, 16, 18–22, 24, 32 and 33 for the same reasons as claims 1 and 12.

*Claims 25–30*

Independent claim 25 requires, *inter alia*, “a computer having a receptacle configured to electrically and physically connect with said

removable memory device . . . wherein said computer is (i) remotely located,” (App. Br. 37, Claims App.).

The Examiner finds this limitation disclosed in “Chaco at column 22 lines 44–67 and column 23 lines 1–7 and Figure 14” (Non-Final Act. 11).

Appellant contends that “there is no teaching in Chaco of a central computer with a receptacle for receiving the program cartridge” (App. Br. 25).

In the Answer, the Examiner does not respond to the Appellant’s argument regarding claim 25.

We are persuaded by Appellant’s arguments.

A rejection based on § 103 must clearly rest on a factual basis. The Examiner has the initial duty of supplying the factual basis for the rejection and may not resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis. We have reviewed the cited portions of Chaco and see no discussion of such a receptacle. Chaco discloses that the central computer can include “a wireless data link” (Chaco, col. 22, line 47), but we fail to see how a wireless data link is configured to “physically connect” with a removable memory device.

Accordingly, we do not sustain the rejection of independent claim 25 as obvious over Fu, Chaco, and Leatherman. For the same reasons, we do not sustain the rejection of claims 26–30 dependent thereon. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

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DECISION

The Examiner's decision to reject claims 1, 3–9, 11–22, 24, and 31–33 under 35 U.S.C. § 103(a) is affirmed.

The Examiner's decision to reject claims 25–30 under 35 U.S.C. § 103(a) is reversed.

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-IN-PART