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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TAHA A. KASS-HOUT
and MASSIMO MIRABITO

Appeal 2014-008603¹
Application 13/280,041²
Technology Center 3600

Before HUBERT C. LORIN, JAMES A. WORTH, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

WORTH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–18. We have jurisdiction under 35 U.S.C. §§ 134 and 6(b).

We AFFIRM-IN-PART.

¹ Our decision refers to the Appellants' Appeal Brief ("Appeal Br.," filed Apr. 9, 2014) and Reply Brief ("Reply Br.," filed Aug. 4, 2014), and the Examiner's Final Office Action ("Final Act.," mailed Oct. 9, 2013) and Answer ("Ans.," mailed June 3, 2014).

² According to Appellants, the real party in interest is Northrop Grumman Systems Corporation (Appeal Br. 3).

Introduction

Appellants' application is titled "Global Disease Surveillance Platform, and Corresponding System and Method," and relates to "medical and public health warning and response systems" (Spec. 1, l. 12).

Claims 1, 4, and 13 are the independent claims on appeal. Claims 1 and 4, reproduced below, are illustrative of the subject matter on appeal:

1. A global disease surveillance platform, comprising:
 - a platform processor, wherein potential public health events are identified, determined, analyzed, and wherein responses to the public health events are monitored;
 - an interface coupled to the platform processor, wherein the interface receives external information feeds comprising structured and unstructured data, and wherein meta-data are extracted from the structured and unstructured data, indexed, and related back to the structured and unstructured data;
 - an external services module that provides services to facilitate the responses; and
 - a storage device, wherein meta-data from the structured and unstructured data, and the structured and unstructured data are stored.

4. An apparatus for managing phases of a public health event, the apparatus including one or more suitably programmed computing devices, the apparatus comprising:
 - an interface that receives structured and unstructured data from one or more external data sources, the interface, comprising:
 - a data transformation module that transforms data from the structured and unstructured data sources into a schema consistent with a schema of the apparatus, and
 - a data classification module that extracts meta-data related to the structured and unstructured data and creates an index of the meta-data back to the meta data's structured or unstructured data;

a data store coupled to the interface, wherein the indexed meta-data and the structured and unstructured data are stored;
a processing component coupled to the interface, comprising:

analysis algorithms, the analysis algorithms applied to the meta-data,

an alert module, wherein when a threshold, as indicated by application of the algorithms to the meta-data is exceeded, a public health alert is sounded, and

access modules that operate to allow real-time access to the structured and unstructured data, and to the corresponding meta-data, wherein a response to the public health event is managed from pre-planning, identification, detection, and response.

(Appeal Br. i, Claims App.)

Rejection on Appeal

The Examiner maintains, and Appellant appeals, the following rejections:

- I. Claims 4–12 and 17 stand rejected under 35 U.S.C. § 101, as being directed to non-statutory subject matter.
- II. Claim 10 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.
- III. Claims 1–9, 11, and 13–18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Britton (US 2005/0055330 A1, pub. Mar. 10, 2005).
- IV. Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Britton and Sholl (US 2011/0004485 A1, pub. Jan. 6, 2011).

- V. Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Britton and Epler (US 7,024,370 B2, iss. Apr. 4, 2006).

ANALYSIS

Rejection I (Unpatentable Subject Matter)

Claims 4–12 and 17

Claims 4–12 and 17 stand rejected under 35 U.S.C. § 101, as being directed to non-statutory subject matter. The Examiner reasons, and Appellants dispute, that the claimed subject matter is directed to software *per se* (Final Act. 3; *see also* Appeal Br. 10). In particular, the Examiner finds that:

Independent claim 4 is directed to an apparatus comprising an interface made of software modules, a database and a processing component comprising another series of software modules. The interface and processing component are made of software modules and algorithms which are not physical structures

(Final Act. 3). As indicated by the Examiner, claim 4 recites “an interface” comprising “a data transformation module that transforms data” and a “data classification module that extracts meta-data.” Claim 4 also recites a “processing component coupled to the interface” that perform the functions of applying analysis algorithms, sounding an alert, and allowing real-time access to data. Pages 3–4 of the Specification disclose corresponding structure. As a matter of claim construction, we disagree with the Examiner that the recited “processing component” is software alone. Indeed, we determine that claim 4 does not recite sufficient structure for the “processing component” to avoid reliance on 35 U.S.C. § 112 ¶ 6. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1346 (Fed. Cir. 2015) (*en banc*)

(citation omitted). As such, we determine that the recited “processing component” derives structure from the “platform processor” described in the Specification (*e.g.* Spec. 3, ll. 24–30). In any event, we disagree with the Examiner’s determination that claim 4 is directed to software *per se*. Accordingly, we do not sustain the Examiner’s rejection under 35 U.S.C. § 101 of claims 4–12 and 17.

Rejection II (Written Descriptions)

Claim 10

Claim 10 depends from claim 4. The Examiner finds that the disclosure of the Specification does not provide written description support for the “means for back tracking,” as recited in claim 10, i.e., “wherein the algorithms comprise means for back tracking from a current status of a public health event to locate a source and time of first occurrence of the event” (Final Act. 3–4). The Examiner also finds that the Specification does not disclose “back tracking” itself (Ans. 10).

As a matter of claim construction, we determine that the recited “means for back tracking” does not recite sufficient structure for the “processing component” to avoid reliance on 35 U.S.C. § 112 ¶ 6, and we look to the Specification for the corresponding structure. *See Williamson*, 792 F.3d at 1346 (citation omitted). We are persuaded by Appellants’ argument that Figure 10 of the Specification provides corresponding structure for “back tracking” when Figure 19 of the Specification depicts a computer visualization with dashed arrows connecting events. We further find that Figure 10 of the Specification lists corresponding previous events for back tracking dated 11/15/2006 and 3/14/2006 (not just 11/15/2006 as

found by the Examiner) (*see* Appeal Br. 11; Reply Br. 6). We agree with Appellants that the earlier-dated events meet the “source and time of first occurrence” element and that the arrows meet the “tracking” element. We, therefore, do not sustain the Examiner’s rejection of claim 10 under § 112, first paragraph.

Rejection III (Anticipation)

Claims 1–9, 11, and 13–18

We are persuaded by Appellants’ argument that Britton fails to disclose “unstructured data” as recited in independent claim 1, i.e.,

wherein the interface receives external information feeds comprising structured and unstructured data, and wherein meta-data are extracted from the structured and unstructured data, indexed, and related back to the structured and unstructured data;

a storage device, wherein meta-data from the structured and unstructured data, and the structured and unstructured data are stored

(Appeal Br. 11–14). The Examiner relies on paragraphs 37, 56, 62, 77, and 114–115 of Britton, and in particular on the disclosure in Britton (¶ 62) of the translation of messages into NEDSS compatible networks (Final Act. 10).

Appellants assert that “unstructured data” “refers to data which does not have a data structure which is easily readable by a machine such as audio, video, text within the body of an email or word processor document, and blogs” (Appeal Br. 12 (citing Spec. page 9, lines 1–5 and page 21, line 27)). Appellants assert that Britton’s data is being translated whereas,

according to Appellants the data of independent claim 1 remains in unstructured format.

We agree with Appellants that the portions of Britton relied on by the Examiner disclose the translation of data to recognized formats for storage but do not disclose the storage of unstructured data, as recited. Although the Examiner relies on the disclosure of data in Britton (§ 76) translated into Office formats (Ans. 76), we do not find that Britton discloses the storage of data that is being translated to Office format *prior to the translation*, i.e., when it would still be in “unstructured” format. We have also reviewed the remainder of Britton, and find that it does not disclose the *storage* of unstructured data. We, therefore, do not sustain the Examiner’s rejection under § 102 of independent claim 1 and its dependent claims.

Claims 4 and 13 contain similar language and requirements as independent claim 1. We do not sustain the Examiner’s rejection under § 102 of independent claims 4 and 13 and their dependent claims, for similar reasons as for independent claim 1.

Rejections IV–V (Obviousness)

The Appeal Brief does not contest the Examiner’s rejections under § 103(a) of dependent claims 10 and 12. As such, any arguments with respect thereto are waived. 35 C.F.R. § 41.37. We, therefore, sustain the Examiner’s rejections under § 103(a) of dependent claims 10 and 12.

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DECISION

The Examiner's decision to reject claims 10 and 12 is affirmed.

The Examiner's decision to reject claims 1–9, 11, and 13–18 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)(1)(iv).

AFFIRMED-IN-PART