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Constellation Law Group, PLLC
P.O. Box 580
Tracyton, WA 98393

EXAMINER

MORGAN, ROBERT W

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EDWARD K.Y. JUNG,
ROYCE A. LEVIEN,
ROBERT W. LORD,
MARK A. MALAMUD,
JOHN D. RINALDO JR.,
and LOWELL L. WOOD JR.

Appeal 2014-009031
Application 11/283,548
Technology Center 3600

Before ANTON W. FETTING, JAMES A. WORTH, and
BRUCE T. WIEDER, *Administrative Patent Judges*.
FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Edward K.Y. Jung, Royce A. Levien, Robert W. Lord, Mark A. Malamud, John D. Rinaldo Jr., and Lowell L. Wood Jr. (Appellants) seek review under 35 U.S.C. § 134 of a final rejection of claims 1–10, 12–21, 23, 25, 28, 31–34, 38–46, 53, and 54, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellants invented a way of accepting a selection of a linkage associated with a health regimen data entity of one or more health regimen data entities. Specification 1:6–8.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A method implemented using one or more processing components, the method comprising:

¹ Our decision will make reference to the Appellants' Appeal Brief ("Br.," filed March 31, 2014) and the Examiner's Answer ("Ans.," mailed June 18, 2014), and Final Action ("Final Act.," mailed December 30, 2013).

[1] accepting at least one selection of one or more linkages between

a first health regimen data entity

and

a second health regimen data entity

that [second health regimen data entity] is linked with one or more other health regimen data entities;

and

[2] storing the one or more linkages between the first health regimen data entity and the second health regimen data entity

such that the one or more other health regimen data entities are accessible in association with the first health regimen data entity.

The Examiner relies upon the following prior art:

Anderson	US 6,021,202	Feb. 1, 2000
Herren	US 6,108,635	Aug. 22, 2000
Browne	US 2004/0064342 A1	Apr. 1, 2004

Claims 1–10 and 12–20 stand rejected under 35 U.S.C. § 101 as directed to non–statutory subject matter.

Claims 1–10, 12, 21, 23, 25, 28, 31–34, 38, 53, and 54 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Browne and Herren.

Claims 13–20 and 39–46 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Browne, Herren, and Anderson.

ISSUES

The issues of patentable subject matter turn primarily on whether the concept of data entry and storage per se is an abstract idea. The issues of obviousness turn primarily on whether Browne's linked list associates the various members of its linked list with one another to make them accessible.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to Claim Construction

01. The disclosure contains no lexicographic definition of "linkage."

Facts Related to Appellants' Disclosure

02. Examples of linkages include a pointer, identifier, and/or a link. Spec. 4:19–22.

Facts Related to the Prior Art

Browne

03. Browne is directed to patient health care protocols, and more particularly, to protocols implemented with the assistance of electronic devices. Browne para. 1.
04. Browne describes techniques for managing health care protocols with a device such as a defibrillator, patient monitor, or other device. The device may be brought to the site of a patient in

need of medical assistance. The device selects a protocol as a function of patient data. The device may select a protocol at the explicit direction of an operator of the device, such as an EMT, or may select a protocol as a function of information received from sources such as the patient or the operator or both. Browne para. 5.

05. Browne's device presents information pursuant to the protocol to assist an operator attending to the patient. The device also records information pursuant to the protocol pertaining to the patient and the course of treatment administered to the patient. Browne para. 6.

06. Browne uses the term "protocol" broadly, and it encompasses plans, procedures and rules for treating patients. The term encompasses general procedures, as well as procedures applicable to a specific patient complaint, condition or presentation. "Protocol" further includes rules and guidelines applicable to a jurisdiction. The information presented pursuant to the protocol may include sets of procedures, reference information, utilities such as calculators, timers and prompts to the operator. Browne para. 7.

07. Browne's protocols may be embodied in any of many computer-readable formats, such as a linked list data structure or other data structure in an object-oriented computer language and may include a set of objects related by links. Browne para. 108.

08. In general, objects include data and defined procedures for manipulating the data. A protocol may move from object to object by any of several links, such as by selection of prompts by an operator. Browne para. 109.
09. Customization of a protocol may be realized by customization of objects and the links among objects. Customization may be further realized by creation of new objects and removal of unneeded objects as deemed appropriate by the regulating authority. Browne para. 109.
10. Retrieving a protocol, therefore, may include retrieving one or more objects, or retrieving a set of objects related by links. Browne para. 111.

Herren

11. Herren is directed to developing new therapies, tests, devices, regimens, or other interventions for biological systems and more particularly to systems providing integrated management and analysis of multiple data sources of biological, patient, or population data in developing new interventions. Herren 1:21–29.
12. Herren retrieves the disease progression for the patient over a given time period using a standard intervention and using the proposed intervention. This information determines the patient's status in terms of changes in the signs and symptoms as a result of exposure to the standard intervention and to the proposed intervention. This allows the further assessment of which

intervention is likely to provide the fewest side effects, least time and effort on the part of the patient, the best overall outcome, and other factors as represented in the influence diagrams. Herren 36:53–65.

ANALYSIS

Claims 1–10 and 12–20 rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter

The Examiner finds the claims are drawn to an abstract idea. Ans. 2–3. This as such is not under contention. We are not persuaded by Appellants' argument that the claims recite using processing components. Br. 13–14. Use of generic processing components is insufficient to turn an abstract idea into a patent eligible claim.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the pre-emption concern that undergirds our §101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the

process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice Corp., Pty. Ltd. v CLS Bank Intl, 134 S.Ct. 2347, 2358 (2014)
(citations omitted).

*Claims 1–10, 12, 21, 23, 25, 28, 31–34, 38, 53, and 54 rejected under 35
U.S.C. § 103(a) as unpatentable over Browne and Herren*

We are not persuaded by Appellants' argument that the art fails to describe limitation [2] of storing the one or more linkages between the first health regimen data entity and the second health regimen data entity. Br. 16–22. Appellants contend that Herren fails to describe such storage. *Id.* Appellants misapprehend the Examiner's findings and analysis. The Examiner finds that Browne paras. 108–111 describe storing linkages amid parts of a medical protocol, where that protocol may be modified. Thus, modifying such a protocol would include storing linkages between the components, each of which is a health regimen data entity by virtue of being a data entity that is part of a health regimen protocol.

As Browne explicitly describes at least one implementation for such linkages as being a linked list, and a linked list by definition affords accessibility among all members of the list, inserting such a component with its links into the linked list renders the remaining other health regimen data entities in that protocol accessible in association with the newly inserted health regimen data entity. Although the first limitation [1] is uncontested, we find that as Browne's protocol is described as a linked list, either the protocol itself, or the existing component in the protocol where the new

component is to be inserted, corresponds to the recited second health regimen data entity and again by definition of a linked list is linked with one or more other components, i.e. health regimen data entities.

The Examiner applies *Herren* only to show it was predictable to apply the storage of links among such protocols to a wider medical context using a database for the results.

Separately argued independent claims 21, 23, and 25 are similar to claim 1 and Appellants apply similar arguments which are equally unpersuasive here. Although claim 23 is drafted using means plus function terminology, Appellants do not argue based on such a construction, and so any such arguments are waived.

As to separately argued claims 53 and 54 reciting linkages between a vitamin regimen data entity and a constituent substance data entity, Appellants contend that *Herren* does not describe this limitation.

Appellants respond to the rejection by attacking the references separately, even though the rejection is based on the combined teachings of the references. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

The Examiner applies *Herren* to show it was predictable to use Browne's protocol object as an implementation for a vitamin regimen data entity. *See* FF 12. Again, Browne is applied for the linkages per se.

The remaining claims are argued on the basis of the independent claims.

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*Claims 13–20 and 39–46 rejected under 35 U.S.C. § 103(a) as unpatentable
over Browne, Herren, and Anderson*

These claims are argued on the basis of the independent claims.

CONCLUSIONS OF LAW

The rejection of claims 1–10 and 12–20 under 35 U.S.C. § 101 as directed to non–statutory subject matter is proper.

The rejection of claims 1–10, 12, 21, 23, 25, 28, 31–34, 38, 53, and 54 under 35 U.S.C. § 103(a) as unpatentable over Browne and Herren is proper.

The rejection of claims 13–20 and 39–46 under 35 U.S.C. § 103(a) as unpatentable over Browne, Herren, and Anderson is proper.

DECISION

The rejection of claims 1–10, 12–21, 23, 25, 28, 31–34, 38–46, 53, and 54 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED