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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SAMUEL H. CHRISTIE IV and BRYN RHODES

Appeal 2015-008122
Application 13/467,287
Technology Center 2100

Before DEBRA K. STEPHENS, DANIEL J. GALLIGAN, and
AMBER L. HAGY, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of claims 41–54. Claims 1–40 and 55–60 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE and enter a NEW GROUND OF REJECTION UNDER 37 C.F.R. § 41.50(b).

STATEMENT OF THE INVENTION

According to Appellants, the claims are directed to a clinical decision support system, apparatus, and method that provide the ability to evaluate

patient information for triggers resulting in recommendations being returned to a provider (Abstract; Spec. ¶¶ 7–8). Claim 41, reproduced below, is illustrative of the claimed subject matter:

41. A method for coordinating healthcare recommendations comprising:

(a) receiving a plurality of automatically generated healthcare recommendations, each healthcare recommendation including a source therefor;

(b) determining one or more sets of two or more recommendations of the plurality of recommendations that are related;

(c) combining each set of related recommendations into a single combined recommendation listing multiple sources; and

(d) communicating a coordinated list of recommendations, the coordinated list of recommendations including each combined recommendation.

REFERENCE

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Reisman US 2009/0216558 A1 Aug. 27, 2009

REJECTION

Claims 41–54 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Reisman (Final Act. 2–8).

ISSUE

35 U.S.C. § 102(b): Claims 41–54

Appellants contend their invention as recited in claims 41–54, is not anticipated by Reisman (App. Br. 7–8). The issue presented by the arguments is:

Issue: Has the Examiner erred in finding Reisman discloses “combining each set of related recommendations into a single combined recommendation listing multiple sources,” as recited in claim 41?

ANALYSIS

Appellants assert Reisman discloses an alert payload filtering module that consolidates outgoing alerts into recommendation families (App. Br. 7–8 (citing Reisman ¶¶ 70–71)). However, according to Appellants, this description does not disclose that these alerts are combined into a single alert listing multiple sources for the alert (App. Br. 8).

Initially, as a matter of claim construction, we note Appellants have not defined explicitly the term “sources” or “sources for the recommendation” in their Specification. Appellants point to their Specification but do not identify where the terms are explicitly defined (Reply Br. 2). The Examiner interprets “listing multiple sources” broadly and finds each one of the health care providers described in Reisman reads on Appellants’ recited sources (Ans. 9 (citing Reisman ¶ 71)).

Reisman discloses each alert number is associated with a specific health care provider (Reisman ¶ 71). “For example, alert number ‘CC101P’ is associated with a specific health care provider (e.g., ‘Provider 1’), while alert number ‘CC102P’ is associated with a different health care provider (e.g., ‘Provider 2’) based on matching health care provider specialties to the

subject matter of each alert” (*id.*). Although we agree with the Examiner that health care providers are sources of information, Reisman discloses the providers in paragraph 71 identify where the alerts are to be delivered and, thus, are destinations of this particular information, not sources.

The Examiner additionally finds an alternative disclosure in Reisman that describes this limitation (Ans. 9). Specifically, the Examiner finds Reisman discloses consolidating outgoing alerts into recommendation families which discloses the recited multiple sources (*id.*). However, although Reisman does indeed disclose consolidating outgoing alerts into recommendation families, we determine Reisman fails to describe the multiple sources are listed, as recited in independent claim 41 and commensurately recited in independent claim 48. Claims 42–47 and 49–51 depend from independent claims 41 and 48, respectively, and thus, stand with their respective independent claims.

Accordingly, we are constrained to reverse the rejection of claims 41–54 under 35 U.S.C. § 102(b) for anticipation by Reisman. We do, however, in a new ground of rejection, conclude an ordinarily skilled artisan would have found it obvious to modify Reisman to list multiple sources. Specifically, Reisman teaches data received by the system from different sources, such as, for example, a claim, pharmacy, lab result-based clinical data, nurse-entered data, etc. (Reisman ¶¶ 3, 7, 8). Indeed, the real-time application messaging module collects incoming real-time clinical data from multiple sources (*id.* ¶ 13). Reisman also teaches providing recommendations to patients and providers, using health reference information, medical news, etc. (*id.* ¶¶ 43, 46; Figs. 1–2). We determine Reisman teaches, suggests, or otherwise renders obvious the information

received is evaluated and alerts or recommendations are created (*id.* ¶ 70). We further determine Reisman teaches the sources of the information are known (*id.* ¶ 3, 7, 8, 13). Because the sources are known, we determine Reisman renders obvious “combining each set of related recommendations into a single combined recommendation listing multiple sources,” as recited in claim 41.

More specifically, a skilled artisan is “a person of ordinary creativity, not an automaton.” *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 420–21 (2007). Here, we determine, given the sources are known, that “listing multiple sources” would not have been “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citations omitted).¹

Thus, pursuant to our authority under 37 C.F.R. § 41.50(b), we enter a new ground of rejection of independent claims 41 and 48 under 35 U.S.C. § 103 as being unpatentable over Reisman. However, we have not reviewed the remaining claims 42–47 and 49–54 to the extent necessary to determine whether these claims are unpatentable over Reisman. We leave it to the Examiner to determine the appropriateness of any further rejections

¹ We further note, because the preamble does not recite, nor does the claim limitation require, a computer, the step may be performed by a person. As such, we find such a step would have been obvious to an ordinarily skilled artisan at the time of the invention. Specifically, we find an ordinarily skilled artisan, such as a doctor or a patient, would have found it obvious to combine each set of related recommendations (related to, e.g., a specific medical condition) into a single combined recommendation listing multiple sources, such as a patient file.

based on these or other references. Our decision not to enter a new ground of rejection for all claims should not be considered as an indication regarding the appropriateness of further rejection or allowance of the non-rejected claims.

DECISION

The Examiner's rejection of claims 41–54 under 35 U.S.C. § 102(b) as being anticipated by Reisman is reversed.

In a new ground of rejection, we reject claims 41–54 under 35 U.S.C. § 103(a), as being unpatentable over Reisman.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (2016). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides:

When the Board enters such a non-final decision, the appellants, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new

ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellants may again appeal to the Board pursuant to this subpart.

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

REVERSED; 37 C.F.R. § 41.50(b)