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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN S. BORKE and ANDRE LANOUILLE¹

Appeal 2016-001275
Application 13/291,679
Technology Center 2600

Before BRUCE R. WINSOR, DANIEL N. FISHMAN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Non-Final Rejection of claims 1–22. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ According to Appellants, the real party in interest is Georgia-Pacific Consumer Products LP. *See* Appeal Brief 3.

BACKGROUND

The claimed invention relates to a zone-based hand hygiene compliance system that monitors healthcare worker compliance with a hand hygiene protocol. Spec. ¶ 24.² Claims 1, 11, 13, and 17 are independent. Claims 1 and 11 are exemplary and are reproduced below with disputed limitations emphasized:

1. A method for performing sanitation compliance monitoring, the method comprising:

receiving, at a computer, sanitation compliance data comprising a zone identifier corresponding to a first device in a zone and an entity identifier corresponding to a second device attached to a mobile entity in the zone, the zone defined by an area over which the first device and the second device communicate via one-way or two-way communication, wherein the zone is one of a target zone or a sanitation zone, the computer storing information associating each target zone with one or more approved sanitation zones, and wherein if the zone is a target zone, the zone does not overlap with a sanitation zone and if the zone is a sanitation zone, the zone does not overlap with a target zone;

determining whether the mobile entity is compliant with a sanitation protocol associated with the zone, *whereby compliance with the sanitation protocol associated with the zone is based at least in part on use of one of the one or more approved sanitation zones by the mobile entity and wherein use of a sanitation zone other than one of the one or more approved sanitation zones is not in compliance with the sanitation protocol*; and

updating a database with results of the determining.

² Throughout this Opinion, we refer to: (1) Appellants' Specification filed Nov. 8, 2011 ("Spec."); (2) the Non-Final Office Action ("Non-Final Act.") mailed Apr. 9, 2015; (3) the Appeal Brief ("Appeal Br.") filed July 2, 2015; (4) the Examiner's Answer ("Ans.") mailed Sept. 11, 2015; and (5) the Reply Brief ("Reply Br.") filed Nov. 6, 2015.

11. A system for performing sanitation compliance monitoring, the system comprising:

a sanitation station configured to accomplish a sanitation event that meets at least one criterion, the sanitation station being at least partially within a sanitation zone;

a mechanism to detect the sanitation event at the sanitation station;

a user interface; and

a device comprising logic for:

detecting at least two entity identification (ID) tags within the sanitation zone during a sanitizing event, each entity tag ID comprising a unique tag identifier corresponding to an entity;

selecting an entity ID tag from the at least two detected entity ID tags based at least in part on a predetermined algorithm, wherein the predetermined algorithm is based at least in part on an order with which the at least two entity ID tags entered the sanitation zone;

displaying a unique tag identifier associated with the selected entity ID tag, the displaying at the user interface;

determining whether the at least one criterion has been met at the sanitation station; and

updating a database with results of the determining and the tag identifier associated with the selected entity ID tag.

REFERENCES

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

Wildman et al. (“Wildman”)	US 6,727,818 B1	Apr. 27, 2004
Huften et al. (“Huften”)	US 7,898,407 B2	Mar. 1, 2011
Koblasz	US 8,040,245 B2	Oct. 18, 2011
Tokhtuev et al. (“Tokhtuev”)	US 8,502,680 B2	Aug. 36, 2013

REJECTIONS

Claims 1–10 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wildman and Hufton. Non-Final Act. 3–10.

Claims 11 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wildman and Koblasz. Non-Final Act. 10–13.

Claims 17, 18, and 20–22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wildman. Non-Final Act. 13–16.

Claims 13–16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tokhtuev and Wildman. Non-Final Act. 16–20.

Our review in this appeal is limited only to the above rejections and issues raised by Appellants. We have not considered other possible issues that have not been raised by Appellants and are, therefore, not before us.

See 37 C.F.R. § 41.37(c)(1)(iv) (2014).

ISSUES

1. Whether the Examiner errs in finding Wildman teaches or suggests “use of a sanitation zone other than one of the one or more approved sanitation zones is not in compliance with the sanitation protocol,” as recited in claim 1?

2. Whether the Examiner errs in finding the combination of Wildman and Koblasz teaches or suggests “selecting an entity ID tag from the at least two detected entity ID tags based at least in part on a predetermined algorithm, wherein the predetermined algorithm is based at least in part on an order with which the at least two entity ID tags entered the sanitation zone,” as recited in claim 11?

ANALYSIS

Claim 1

The Examiner relies upon Wildman to teach or suggest the disputed limitations of independent claim 1. Non-Final Act. 3–7. Specifically, the Examiner relies on Wildman’s disclosure of an Individual Detailed Compliance Report, as illustrated by Wildman’s Figure 13B, reproduced below:

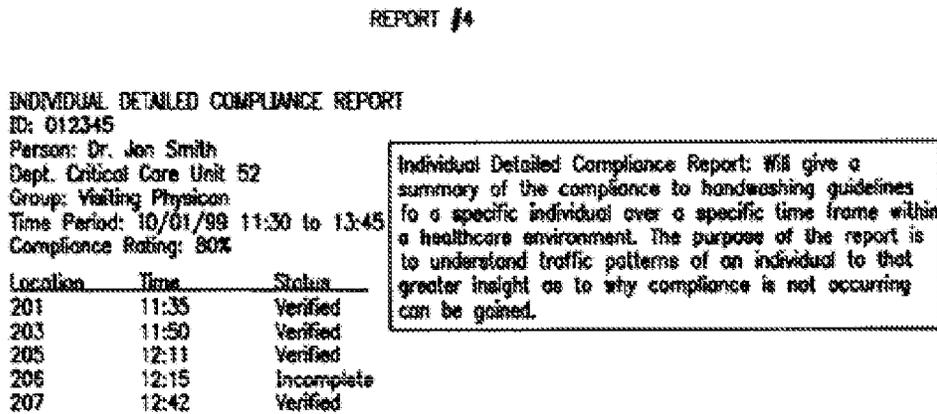


FIG. 13B

Wildman’s Figure 13B shows a sample individual detailed compliance report including locations and times of various hand washings by Dr. Jon Smith. Wildman col. 2, ll. 13–14. As seen in the report, several hand washings by Dr. Smith at various times and locations, including a handwashing performed at location 207 and time 12:42, are indicated as “Verified.” In contrast, the hand washing at location 206 and time 12:15 is indicated as “Incomplete.”

The Examiner indicates that Wildman teaches Dr. Smith is not fully compliant with the schedule “because the employee used 207 and not 206 the authorized dispenser.” Non-Final Act. 5. The Examiner further states “the employee is non-compliant regardless of utilizing the hand sanitizer dispenser at 207, because the sanitizing station at 207 is not authorized for sanitation compliance for 206.”³ *Id.* The Examiner consequently interprets Wildman’s indication of hand washing event 206 as incomplete as suggesting “wherein use of a sanitation zone other than one of the one or more approved sanitation zones is not in compliance with the sanitation protocol,” as claimed. *See* Non-Final Act. 7; Ans. 7.

Appellants contend “Wildman does not provide any information suggesting that the individual's incomplete status at location 206 is due to a hand washing at a hand washing device other than an approved hand washing device.” Appeal Br. 13. Appellants further contend Wildman does not discuss that the hygiene protocol requires the hand washing occur at a specifically approved hand washing device and, thus, Wildman suggests “the ‘incomplete’ status of the individual at location 206 is due to the individual not washing his hands in the allowed time frame; nothing more.” Appeal Br. 14.

We agree with Appellants that the Examiner fails to establish that Wildman indicates location 207 is an “approved sanitation zone” and that location 206 is “other than one or more approved sanitation zones.”

³ The Examiner appears to have inadvertently switched locations 206 and 207 in this analysis, because it is actually location 206 that includes the indication of an incomplete wash. We view this to be a typographical or clerical error, as the Examiner indicates the locations correctly elsewhere in the Office Action. *See, e.g.,* Non-Final Act. 5, ll. 16–18.

Wildman does not indicate the meaning of the term “Incomplete” in the context of Fig. 13B. Wildman simply indicates that an unsuccessful handwashing would occur when a caregiver uses water but not soap. Wildman col. 8, ll. 19–21. The Examiner, therefore, does not sufficiently substantiate the finding that Wildman suggests Dr. Smith’s incomplete wash is not compliant with the sanitation protocol because location 206 is other than an approved sanitation zone.

Consequently, because the Examiner fails to establish that Wildman distinguishes approved sanitation zones from other than approved sanitation zones, the Examiner has not established Wildman teaches or suggests “wherein use of a sanitation zone other than one of the one or more approved sanitation zones is not in compliance with the sanitation protocol,” as recited in claim 1.

Accordingly, because we are unable to ascertain a basis in Wildman for the disputed findings discussed above, we are constrained to reverse the Examiner’s 35 U.S.C. § 103(a) rejection of claim 1.⁴

Because we agree with at least one of the dispositive arguments advanced by Appellants for claim 1, we need not reach the merits of Appellants’ other contentions.

We also are constrained to reverse the rejections of independent claims 13 and 17, which recite commensurate limitations, and of dependent claims 2–10, 14–16, and 18–22, which stand with their respective independent claims.

⁴ Should there be further prosecution of this application, the Examiner may wish to review claim 1 for compliance under 35 U.S.C. § 101 in light of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank Inter.*, 134 S. Ct. 2347 (2014) and subsequent agency guidance.

Claim 11

Appellants contend the Examiner errs in rejecting claim 11 because the combination of Wildman and Koblasz does not teach or suggest “selecting an entity ID tag from the at least two detected entity ID tags based at least in part on a predetermined algorithm, wherein the predetermined algorithm is based at least in part on an order with which the at least two entity ID tags entered the sanitation zone,” as recited in independent claim 11. Appeal Br. 25–27. Appellants note that “*Wildman* teaches that the individual persons in a group of persons may be determined.” Appeal Br. 25. But according to Appellants, Koblasz fails to cure the deficiencies of Wildman because “*Koblasz* is not interested in the order in which the people enter the room, but merely that the number of hand washings completed, as counted by the number of soap dispenser activations, is equal to the number of people who entered the room.” Appeal Br. 26.

We are not persuaded the Examiner erred. Instead, we agree with the Examiner that the combination of Wildman and Koblasz teaches or suggests the disputed limitations of claim 11. As such, we adopt the Examiner’s findings and explanations provided therein. Non-Final Act. 10–13; Ans. 10–12.

At the outset, we note because Appellants agree that Wildman teaches that the individual persons in a group of persons may be determined or selected, the only remaining issue is whether Koblasz teaches or suggests “a predetermined algorithm, wherein the predetermined algorithm is based at least in part on an order with which the at least two entity ID tags entered the sanitation zone, as recited in independent claim 11.”

The Examiner correctly finds that Koblasz teaches mechanisms for detecting the time of entry of each person into the room, for identifying each person entering the room, and for identifying each person obtaining soap from a soap dispenser. Ans. 11 (citing Koblasz col. 1, l. 65 – col. 2, l. 7.) Koblasz describes that “[e]ntry detection and identification data is used to determine whether the person entering the room activates the soap dispenser within an allotted amount of time after entering the room” and “a notification that includes the identity of the person is provided . . . warning the identified person to wash his or her hands.” Koblasz col. 2, ll. 3–7. Koblasz uses floor detection devices 114A and 114B (as loops of conductive wire or foil configured as RFID antennas) to read RFID tags inside employees’ shoes or insoles. Koblasz col. 4, ll. 7–10. We agree with the Examiner’s finding that because Koblasz tracks, using RFID tags, an identity of and a time that *each* employee enters a sanitary zone and then washes hands, Koblasz teaches or suggests a predetermined algorithm based *on an order* with which the at least two entity ID tags entered the sanitation zone.

For the reasons set forth above, we concluded Appellants have not demonstrated Examiner error. As such, we sustain the Examiner’s rejection of claim 11 and of dependent claim 12, which Appellants do not argue separately. *See* Appeal Br. 25–27.

DECISION

We affirm the Examiner’s decision rejecting claims 11 and 12 under 35 U.S.C. § 103(a).

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We reverse the Examiner's decision rejecting claim 1–10 and 13–22 under 35 U.S.C. § 103(a).

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