



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/149,202	05/31/2011	Jason Goldberg	336009-2001.2	1990

20999 7590 02/04/2019
HAUG PARTNERS LLP
745 FIFTH AVENUE - 10th FLOOR
NEW YORK, NY 10151

EXAMINER

JIAN, SHIRLEY XUEYING

ART UNIT	PAPER NUMBER
----------	--------------

3792

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

02/04/2019

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@haugpartners.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JASON GOLDBERG

Appeal 2017-004908
Application 13/149,202
Technology Center 3700

Before JENNIFER D. BAHR, WILLIAM A. CAPP, and JILL D. HILL,
Administrative Patent Judges.

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Jason Goldberg (Appellant)¹ appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 26–31. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing in accordance with 37 C.F.R. § 41.47 was held on January 16, 2019.

We REVERSE.

¹ The Appeal Brief identifies Ideal Life Inc. as the real party in interest. Appeal Br. 1.

THE CLAIMED SUBJECT MATTER

Claim 26, reproduced below with pertinent limitations italicized for emphasis, is the only independent claim and is representative of the claimed subject matter.

26. A medical monitoring system comprising a portable monitoring device and a remote computer:

wherein the monitoring device and the remote computer communicate over a communications network, the monitoring device receives sensor data from at least one sensor related to at least one physiological characteristic of a person being monitored and provides data over the communications network to the remote computer, and *the remote computer generates statistical data related to data received from the monitoring device over the communications network and provides at least the statistical data to the monitoring device over the communications network;*

the monitoring device comprising:

at least one memory;

an electronic controller which causes sensor data to be stored at least temporarily in the at least one memory, generates measurement data related to the sensor data and causes the measurement data to be at least temporarily stored in the at least one memory;

a communications unit;

wherein the electronic controller causes the communications unit to provide data stored in the at least one memory for transmission over the communications network for receipt by the remote computer and causes at least statistical data provided by the remote computer over the communications network received by the monitoring device to be at least temporarily stored in the at least one memory;

a display device;

wherein the electronic controller causes the display device to display at least measurement data from the measurement data that was previously generated and stored in the at least one memory device by the electronic

controller, and statistical data from the statistical data that was received from the remote computer.

REJECTIONS

- I. Claims 26, 27, and 31 stand rejected under 35 U.S.C. § 102(b) as anticipated by Mault (US 6,478,736 B1, issued Nov. 12, 2002).
- II. Claims 28–30 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mault and Teller (US 6,605,038 B1, issued Aug. 12, 2003).

DISCUSSION

Both of the rejections are predicated in pertinent part on the Examiner’s finding that Mault’s remote computer system 80 (the remote computer) generates statistical data related to data received by computing device 52 (the portable monitoring device) from sensors and *provides this statistical data to device 52*. See Ans. 3–5, 6–7 (relying on Teller only for its teachings directed to various options for having the portable monitoring device initiate transfer of data), 9–11. Appellant persuasively argues that the passages of Mault cited by the Examiner as disclosing that remote computer system 80 provides statistical data to device 52 do not support this finding by a preponderance of the evidence. Appeal Br. 4–9; Reply Br. 2–7.

Appellant’s Specification provides examples of what is meant by “statistical data.” See Spec. 1:20–25; 3:17–19; 10:23–11:2; *see also* Abstract 4–8. For example, “[s]tatistical data may include high, low, average, mean value, median value, standard deviation, least square, variance, distribution, compilation, etc.” for a given time period “for the person being monitored, as well as for such values for segments or groups of

the population, or limit values, or target values, etc.” Spec. 1:20–25; Abstract 4–8. Thus, we construe “statistical data,” consistent with both its customary usage and the Specification, as numerical data.

In the passage in column 10 cited by the Examiner, Mault discloses that remote computer system 80 provides feedback to device 52, but does not specifically disclose providing feedback comprising statistical data. *See* Mault 10:31–67; Ans. 4, 9–10. The only type of feedback specifically discussed in this passage is feedback “in terms of foods to avoid and alternatives to previously consumed items of poor nutritional value.” Mault 10:49–51. Mault discloses that the data collected by devices 52 may “be used to monitor trends amongst the consumer base, hence enabling the improvement of advice given to any individual consumer.” *Id.* 10:65–67. Monitoring “trends amongst the consumer base” may very well include performing statistical analysis of the collected data, but Mault does not disclose remote computer system 80 providing the statistical data resulting from such analysis to the consumer, much less via device 52.

In the paragraph bridging columns 11 and 12 of Mault, cited by the Examiner (Ans. 4), Mault once again discloses remote computer system 80 analyzing data from device 52 and transmitting messages to device 52, but does not disclose that such messages include statistical data. Mault 11:58–12:14. Mault merely discloses that the messages “could include messages as to modifications in the patient’s conduct, including tests to be conducted or intervals for such tests, and information related to food consumption” and “may include encouragement or criticism of past results.” *Id.* 12:1–6. Although such messages *could* include statistical data, the messages described in this paragraph would not *necessarily* include statistical data.

The Examiner also cites column 11, lines 6–20 of Mault, emphasizing, in particular, Mault’s disclosures that “computer system 80 analyzes the lifestyle data and determines appropriate feedback” and that “[t]he user may view feedback on the display of computing device 52.” Ans. 9 (emphasis omitted). These disclosures are unavailing because, like the other passages discussed above, they are devoid of any indication that the *feedback provided from remote computer system 80* includes statistical data.

The Examiner additionally cites column 11, lines 45–57 of Mault, emphasizing, in particular, Mault’s disclosure that “[t]he format and style of the feedback may be varied to optimize the response of the user” and “[t]he style and tone of the feedback may be matched to an optimum response of the user using the results of previous testing, questioning, previous success or failure at weight control, or other information regarding the user.” Ans. 10–11 (emphasis omitted). As Appellant points out (Reply Br. 5), these disclosures are directed to the format, style, and tone of the feedback, but do not specify that the provided feedback includes statistical data. In particular, Mault discloses providing the feedback using a format, style, and tone designed to evoke an optimum response from the user, based on information known about the user (such as from past results or questioning, or previous success or failure at weight control by the user).

The Examiner also cites column 13, lines 10–20 of Mault. Ans. 11. In particular, the Examiner highlights Mault’s disclosure of feedback from the fitness center “regarding the user’s progress towards weight goals and fitness goals,” as well as the disclosure that “[a]n increased metabolic rate is indicative of an increased level of muscle mass, or reduced fat percentage

for a constant body weight, hence is a desirable goal for users of the fitness center.” *Id.* (emphasis omitted) (quoting Mault 13:14–20). Like the passages discussed above, this passage is silent as to the particular content of the feedback. Feedback regarding a user’s progress toward a weight or fitness goal certainly *could* contain statistical data, such as the target value (the goal) or an average metabolic rate over a particular time period, for example. However, it is possible to provide feedback regarding a user’s progress toward a weight or fitness goal with a message that does not contain statistical data. For example, consistent with Mault’s disclosure of providing messages including encouragement or criticism of past results, the fitness center computer could provide feedback regarding a user’s progress toward a goal by means of a message containing something as simple as a thumbs up or thumbs down emoji, which does not include statistical data. Mault’s statement regarding what an increased metabolic rate may indicate (Mault 13:16–20) appears pertinent to the type of analysis that the fitness center’s computer system might perform in order to assess progress and, thus, determine what feedback to provide. However, Mault does not specify that the computer system provides feedback containing statistical data related to metabolic rate, muscle mass, or fat percentage to the portable monitoring device.

Finally, the Examiner points to the graphs and texts provided in the displays shown in Figures 7A–12C of Mault, which, according to the Examiner, “include statistical data such as: target/goal values, daily balance, progress towards goals, and percentage/distribution values.” Ans. 11. The Examiner is correct that several of the displays in Figures 7A–12C include statistical data. However, these displays are unavailing to establish that

Mault discloses that Mault's *remote computer system 80* provides statistical data to device 52 (the portable monitoring device) because Mault discloses that Figures 7–12 show screens displayed on device 52 and “provided by health management software running on device 52.” Mault 7:59–62 (boldface omitted); *see also id.* 7:61–9:29 (discussing the screens and the health management software running on device 52, which includes functions such as permitting data entry into device 52 by the user, allowing device 52 to receive resting metabolic rate (RMR) data, and providing feedback to the user regarding caloric balance, body measurements (e.g. RMR), body measurement trends, etc.). The Examiner does not direct us to any disclosure in Mault indicating that *remote computer system 80* provides the data displayed on the screens depicted in Figures 7A–12C to device 52 for display.²

For the above reasons, the Examiner does not establish by a preponderance of the evidence that Mault discloses that remote computer

² The Examiner reasons that “since the feedback and advice can be any style or format that is appealing to the [user], . . . then it would have reasonably include[d] graphs and information that are most effective for the specific user, including statistical graph,” examples of which “can be found in Figs. 7A-12C.” Ans. 11 (citing Mault 11:45–57). To the extent that this reasoning may be directed to content that a person having ordinary skill in the art might have been prompted to include in the feedback and advice provided to device 52 by remote computer system 80, this reasoning might be pertinent to a determination that it would have been obvious to modify Mault to have remote computer system 80 provide statistical data to device 52, but it is not pertinent to the finding on which the rejections are premised—namely, that Mault discloses this feature. Moreover, given that the displays in Figures 7A–12C are provided by software running on device 52, the Examiner does not adequately explain why one would have been prompted to have remote computer system 80 provide these same displays to device 52.

system 80 provides statistical data to device 52. Inasmuch as both the rejection of claims 26, 27, and 31 as anticipated by Mault and the rejection of claims 28–30 as unpatentable over Mault and Teller are premised on the Examiner’s unsupported finding that Mault discloses this feature, we do not sustain either of these rejections.

DECISION

The Examiner’s decision rejecting claims 26–31 is reversed.

REVERSED