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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER B. FLEIZACH, ERIC T. SEYMOUR, and GREGORY F. HUGHES

Appeal 2018-003780
Application 15/057,289
Technology Center 2600

Before MAHSHID D. SAADAT, CARL L. SILVERMAN, and ALEX A. YAP, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–6, 8–18, and 20, which constitute all pending claims. We have jurisdiction under 35 U.S.C. § 6(b). An Oral Hearing was held on October 24, 2019.

We REVERSE.

[1] Throughout this Decision, we use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42(a). Appellant identifies Sam Johnson as the real party in interest. App. Br. 3.

STATEMENT OF THE CASE

The invention relates to outputting captions for movies and other video content. Abstract; Spec. ¶¶ 1–7, Figs. 1–6. Claim 1, reproduced below, is exemplary of the subject matter on appeal (emphasis added):

> 1. A closed-loop medication monitoring and feedback system comprising:
>
> a medicinal monitoring apparatus configured to be affixed to a medicinal container, the medicinal monitoring apparatus comprising:
>
> a case configured to be connected to the medicinal container;
>
> at least one activity detector associated with said case, *said activity detector comprising a sensor that is configured to detect a change in an amount of medication associated with said medicinal container*;
>
> a user input device configured to receive user identification information; and
>
> a processing unit communicatively coupled to the at least one activity detector; and
>
> a computing device communicatively coupled to the medicinal monitoring apparatus and configured to receive information from said processing unit regarding activity associated with said medicinal container as detected by said at least one activity detector.

App. Br. 17 (Claims App.).

THE REJECTIONS

Claims 1–6, 8–18, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over de la Huerga (US 8,391,104 B2; iss. Mar. 5, 2013) ("Huerga") in view of Varvarelis et al. (US 7,359,765 B2; iss. Apr. 15, 2008) ("Varvarelis"). Final Act. 2–6.

Claims 6–8 and 19–21 are provisionally rejected on the ground of non statutory double patenting over claims 11–18 of copending Application No. 14/610,641 (2015/0179032). Final Act. 6–8.

ANALYSIS

The § 103 Rejections

Appellant argues that the Examiner errs in finding the combination of Huerga and Varvarelis teaches the claim 1 limitation *said activity detector comprising a sensor that is configured to detect a change in an amount of medication associated with said medicinal container* (also referred to as "disputed limitation"). App. Br. 7–9; Reply Br. 1–2. According to Appellant,

> while de la Huerga discloses a method for computing remaining doses of medication which remain, de la Huerga never discloses any sensor which has an ability to or a configuration to detect a change in the amount of medicine associated with a container, *such as by directly sensing medicine removed from or added to the container*. In de la Huerga, a sensor simply detects when a container cap is removed. That is, *de la Huerga calculates the number of doses inferentially based on access events, and does not disclose any sensor that actually detects a change in the amount of medicine as claimed*.
>
> The claimed system has numerous advantages over the prior art, including de la Huerga. In particular, the invention as claimed allows the user to obtain accurate feedback concerning an amount a medicine remaining in a medicinal container based on the sensor feedback of the *actual amount of medicine* in the container.

App. Br. 8. (Emphasis added).

Appellant presents substantially the same arguments regarding Varvarelis: "Varvarelis is only capable of counting a pill dispensing event and would *thus not be able to detect content addition or removal* through a cap (an event outside a pill dispensing event) *because no direct detection of the contents by a sensor is provided*." *Id.* at 9. (Emphasis added).

In the Answer, the Examiner finds

> Hue[r]ga to disclose at least one activity detector (115) associated with said case, the activity detector (115), comprising a sensor that is configured to detect a change in an amount of medication associated with said medicinal container (col. 44, lines 42-53). de la Huerga further discloses the quantity of medication remaining (84) being compared with the quantity level (1348) (col. 79, line 65-col. 80, line 12). Thus, de la Huerga implicitly teaches that the amount of medication is changed based on the remaining medication as compared to the quantity level as the result of the activity detector (115).

Ans. 2–3.

In the Reply Brief, Appellant reiterates the arguments in the Appeal Brief and further argues "de la Huerga only discloses a sensor that *detects access events* and estimates medication based on the access events, and does not disclose a sensor that is configured to detect a change in an amount of medication, as recited in claim 1." Reply Br. 2.

We are persuaded by Appellant's arguments. Regarding the disputed limitation, *said activity detector comprising a sensor that is configured to detect a change in an amount of medication associated with said medicinal container,* the Examiner's interpretation is unreasonably broad.

During prosecution, claims must be given their broadest reasonable interpretation when reading claim language in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). While we interpret claims broadly but reasonably in light of the Specification, we nonetheless must not import limitations from the Specification into the claims. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Here, we do not agree with the Examiner's claim interpretation and findings that Huergra's calculation of doses based on access events meets the claim 1 limitation, *said activity detector comprising a sensor that is configured to detect a change in an amount of medication associated with said medicinal container*. Although the disputed limitation does not recite "directly" detect a change, the claim recites that the sensor (itself) is configured to detect a change, not simply a sensor used with additional processing to estimate a change. This interpretation is additionally supported by several of the dependent[2] claims. For example, dependent claim 2 recites "[t]he closed-loop medication monitoring and feedback system of Claim 1 *wherein said at least one activity detector is also configured to detect opening and/or closing of said medical container* and wherein said computing device receives information regarding said opening and/or closing of said medicinal container as detected by said at least one activity detector." (Emphasis added). This recites the *activity detector* function of detecting opening and closing but does not further modify the sensor that is configured to detect a change. Thus, the sensor itself does detect a change. A similar analysis applies to dependent claims 8 and 9.

Applying this broad, but reasonable, claim interpretation, we agree with Appellant that Huerga and Varvarelis do not teach or suggest the disputed limitation in which the sensor itself is configured to detect a change.

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[2] *See Free Motion Fitness, Inc. v. Cybex Int'l, Inc.*, 423 F.3d 1343, 1351 (Fed. Cir. 2005) ("The doctrine of claim differentiation creates a presumption that each claim in a patent has a different scope. The difference in meaning and scope between claims is presumed to be significant to the extent that the absence of such difference in meaning and scope would make a claim superfluous.") (internal quotation marks and citations omitted).

In view of the above, we do not sustain the rejection of claim 1, and dependent claims 2–6, 8–18, and 20. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) ("[D]ependent claims are nonobvious if the independent claims from which they depend are nonobvious . . . .").

The Double Patenting Rejections

The Examiner finds that "[a]lthough the claims at issue are not identical, they are not patentably distinct from each other because they both claimed the same subject matter including a medicinal container with an activity detector, memory and computing device configured to receive information regarding the activity associated with the container." Final Act. 8.

Appellant argues the Examiner provides insufficient analysis for the rejection and the finality of this rejection is improper. App. Br. 13–14. Appellant further argues

> the present claim 1 recites said activity detector comprising a sensor that is configured to detect a change in an amount of medication associated with said medicinal container. Reviewing each of independent claim 1, 9, and 11 of U.S. 14/610,641 reveals that none of [] those claims include such a feature. Rather, claims 1, 9, and 11 of U.S. 14/610,641 are directed to scheduling configurations of a monitoring apparatus. None of those claims include any features directed to a sensor to detect a change in an amount of medication. Thus, the present claims are different from and patentably distinct over the claims in U.S. 14/610,641. Therefore, it is respectfully requested that the double patenting rejection be withdrawn.

App. Br. 13–14.

In the Answer, the Examiner finds "both inventions are directed to the same common subject matter with respect to the medicine container and the activity detector for detecting activities of the medicine container. The container's activity, whether it detects the opening/closing of the container,

consumptions or remaining quantity/amount is merely claiming the same endeavor to detect any activities or actions associated with the medicine container. Thus, the actions by the activity detector are not patentably distinct." Ans. 7–8.

In the Reply Brief, Appellant argues the Examiner's findings are conclusory. Reply Br. 6.

We are persuaded by Appellant's arguments. Regarding Appellant's argument that none of the claims in US 14/610,641 recites the claim 1 limitation, "said activity detector comprising a sensor that is configured to detect a change in an amount of medication associated with said medicinal container," our discussion, *supra*, regarding the correct claim interpretation is applicable. In particular, the Examiner does not sufficiently explain why the broad, but reasonable, construction of the disputed limitation does not distinguish claim 1 from the claims in US 14/610,641.

In view of the above, we do not sustain the provisional double patenting rejection of claims 1–6, 8–18, and 20.

Because our decision with regard to the disputed limitation is dispositive of the rejections, we do not address additional arguments raised by Appellant.

DECISION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–6, 8–18, and 20	103(a)	de la Huerga and Varvarelis		1–6, 8–18, and 20
1–6, 8–18, and 20		Double Patenting		1–6, 8–18, and 20
Overall Outcome				1–6, 8–18, and 20

REVERSED