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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MATTHEW S. FROHLIGER, KURT T. BRENKUS and  
STEVE C. KOHLMANN

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Appeal 2019-000374  
Application 13/870,760  
Technology Center 3600

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Before KARA L. SZPONDOWSKI, SCOTT B. HOWARD, and  
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–4, 6–14, and 16–20, which constitute all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Aver Informatics, Inc. Appeal Br. 2.

## STATEMENT OF THE CASE

Appellant's invention generally relates to "processing medical claims and other time-based data sets," and more particularly to "manually-defining an episode of care." Spec. ¶ 1. Claim 1, reproduced below, is representative of the claimed subject matter:

1. A method of processing medical claims, the method comprising:

generating, by a processor, a graphical user interface for display to a user on a display communicating with the processor;

receiving, by the processor, a first selection of a trigger event for an episode of care from the user through the graphical user interface by allowing the user to position an icon representing the first selection within a window of the graphical user interface;

receiving, by the processor, a second selection of at least one time period for the episode of care from the user through the graphical user interface;

receiving, by the processor, a third selection of at least one claim category for the episode of care from the user through the graphical user interface, the at least one claim category defining at least one type of claim that should be added the [sic] episode of care;

automatically creating, by the processor, parameters for the episode of care based on the first, second, and third selections, and storing the parameters;

receiving the medical claims; and

selecting a subset of the medical claims to be included in an instance of the episode of care based on the parameters by identifying a first medical claim included in the medical claims matching the first selection and identifying a second medical claim included in the medical claims matching the third selection and occurring within the second selection.

## REJECTIONS

Claims 1–4, 6–14, and 16–19 stand rejected under 35 U.S.C. § 103 as unpatentable over Dang (US 8,121,869 B2; issued Feb. 21, 2012), Johnson et al. (US 2012/0078665 A1; published Mar. 29, 2012) (“Johnson”), Averill et al. (US 2014/0249848 A1; published Sept. 4, 2014) (“Averill”), Reid et al. (US 2012/0191476 A1; published July 26, 2012) (“Reid”), and Ruben et al. (US 2009/0198517 A1; published Aug. 6, 2009) (“Ruben”). Final Act. 2.<sup>2</sup>

Claim 20 stands rejected under 35 U.S.C. § 103 as unpatentable over Averill, Reid, and Ruben. Final Act. 6.

## ANALYSIS

### *35 U.S.C. § 103 Rejections*

*Dispositive Issue:* Did the Examiner err in finding the combination of Dang, Johnson, Averill, Reid, and Ruben teaches or suggests “receiving . . . a first selection of a trigger event for an episode of care from the user through the graphical user interface,” “receiving . . . a second selection of at least one time period for the episode of care from the user through the graphical user interface,” “receiving . . . a third selection of at least one claim category for the episode of care from the user through the graphical user interface, the at least one claim category defining at least one type of claim that should be added the [sic] episode of care,” and “automatically creating . . . parameters for the episode of care based on the first, second,

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<sup>2</sup> The Examiner’s statement of rejection includes claim 15, which has been canceled. We treat this as a harmless typographical error.

and third selections,” as recited in independent claim 1, and commensurately recited in independent claim 14?

The Examiner finds Averill teaches selecting a trigger event, time period, and claim category through a graphical user interface to create parameters for an episode of care. Final Act. 3 (citing Averill ¶¶ 22, 24, 26, 59, claims 7–11). Specifically, the Examiner finds Averill’s resource types, including “an Outpatient/Professional Laboratory category, a Professional Office category, etc.,” correspond to the claimed claim categories, which include examples such as a laboratory, office visits, and procedures. Ans. 4. The Examiner further finds Averill teaches “a ‘total level of resource utilization’ based on ‘a single healthcare service episode,’” and that Averill’s “‘total level of resource utilization’ is equivalent to Appellant[’]s ‘episode of care.’” Ans. 5. According to the Examiner, because Averill’s “elements are selectable in the user interface,” Averill “teaches automatically creating, by the processor, parameters for the episode of care based on the first, second, and third selections.” Ans. 5.

Appellant argues that the “‘resource type parameter’ referenced in Averill is *NOT* used to group claims into episodes of care but rather is a parameter used to calculate a resource utilization for a particular episode of care.” Appeal Br. 10; *see* Reply Br. 2–3. According to Appellant, “even if Averill uses ‘resource type’ parameters for calculating resource utilization values, Averill clearly fails to even suggest using similar ‘resource type’ parameters for defining episodes of care.” Reply Br. 3. Specifically, Appellant argues that Averill “fails to teach or suggest receiving the ‘third selection’ as recited in the pending claims relating to a claim category” or “applying this third selection by creating parameters for an episode of care

based on this third selection relating to claim categories (as well as other selections) . . . wherein these parameters are used to identify claims to be included in an instance of an episode of care.” Reply Br. 3.

We are persuaded by Appellant’s arguments. Claim 1 requires (1) receiving *a first selection of a trigger event for an episode of care* from the user through the graphical user interface, (2) receiving *a second selection of at least one time period for the episode of care* from the user through the graphical user interface, (3) receiving *a third selection of at least one claim category for the episode of care* from the user through the graphical user interface, and (4) automatically *creating parameters for the episode of care* based on the *first, second, and third selections*.

The cited sections of Averill teach “resource utilization module 223 may determine resource utilization values **for determined healthcare service episodes based on selection parameters received from a user.**” Averill ¶ 110 (emphasis added). As an example, Averill teaches “user interface module 217 may output a user interface (UI) 232 to output device 230” for a user to “enter selection parameters” including “resource type categories” and “CRG status parameters such as a CRG window length parameter.” Averill ¶¶ 110–111. Then, Averill teaches that “[b]ased on all of these selection parameters, resource utilization module 223 may determine a resource utilization value for one or more healthcare service episodes.” Averill ¶ 111.

In other words, Averill teaches using selection parameters, including categories, time, and trigger events, that can be selected by a user through a user interface, to *then determine a resource utilization value for determined healthcare service episodes*. However, the Examiner has not sufficiently explained how Averill teaches applying the selection parameters, and

particularly the claim category selection parameter, to *create parameters for an episode of care*, and subsequently *using the parameters to identify claims to be included in an instance of an episode of care*. Even the Examiner’s findings acknowledge that the Averill’s “‘episode of care’ . . . describe[s] the group of claims prior to determining a level of resource utilization.” Ans. 5.

Therefore, we find the Examiner has not provided sufficient findings that the combination of Dang, Johnson, Averill, Reid, and Ruben teaches or suggests the claimed “automatically creating . . . parameters for the episode of care based on the first, second, and third selections,” wherein the “first selection [is] of a trigger event for an episode of care,” the “second selection [is] of at least one time period for the episode of care,” and the “third selection [is] of at least one claim category for the episode of care” that “define[s] at least one type of claim that should be added the [sic] episode of care.” Because we agree with at least one of the arguments advanced by Appellant, we need not reach the merits of Appellant’s other arguments.

Accordingly, we do not sustain the Examiner’s § 103 rejection of independent claims 1 and 14, and dependent claims 2–4, 6–13, and 16–19.

We similarly do not sustain the Examiner’s § 103 rejection of independent claim 20, which is commensurate in scope to claims 1 and 14, and for which the Examiner relies on Averill for claim limitations commensurate to those discussed above.

## CONCLUSION

We reverse the Examiner’s rejections of claims 1–4, 6–14, and 16–20 under 35 U.S.C. § 103.

In summary:

Appeal 2019-000374  
Application 13/870,760

| <b>Claims Rejected</b>     | <b>35 U.S.C. §</b> | <b>Basis</b>                              | <b>Affirmed</b> | <b>Reversed</b>  |
|----------------------------|--------------------|---|-----------------|------------------|
| 1-4, 6-14, 16-19           | 103                | Dang, Johnson,<br>Averill, Reid,<br>Ruben |                 | 1-4, 6-14, 16-19 |
| 20                         | 103                | Averill, Reid,<br>Ruben                   |                 | 20               |
| <b>Overall<br/>Outcome</b> |                    |   |                 | 1-4, 6-14, 16-20 |

REVERSED