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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte COLLEEN ENNETT and
STIJN DE WAELE

Appeal 2019-002143
Application 14/424,055
Technology Center 3700

Before MICHAEL L. HOELTER, MICHAEL J. FITZPATRICK, and LISA M. GUIJT, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1, 3–7, 9, 13, 16–18, and 20–28. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] 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 "Koninklijke Philips N.V." Appeal Br. 1.

CLAIMED SUBJECT MATTER

The disclosed subject matter "relates to assessing patient health." Spec. 1:3. System claims 1 and 24, and method claim 13, are independent. Claim 13 is illustrative of the claims on appeal and is reproduced below.

> 13. A method performed by one or more processors for assessing the health of a patient, the method comprising:
>
> receiving medical data representing a patient's oxygen saturation;
>
> detecting oxygen desaturation events from the medical data;
>
> determining recovery responses of the patient following each oxygen desaturation event; and
>
> generating a health assessment based on the recovery responses of the patient, wherein the health assessment is based on at least the patient's recovery responses with caregiver intervention and the patient's recovery responses without caregiver intervention.

EVIDENCE

Lynn et al. ("Lynn '064")	US 6,223,064 B1	Apr. 24, 2001
Lynn et al. ("Lynn '144")	US 2006/0149144 A1	July 6, 2006

REJECTIONS

Claims 13, 16–18, 20, and 21 are rejected under pre-AIA 35 U.S.C. § 102(b) as anticipated by Lynn '064.

Claims 1, 3–7, 9, and 22–28 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Lynn '064 and Lynn '144.

ANALYSIS

The rejection of claims 13, 16–18, 20, and 21 as anticipated by Lynn '064

Appellant argues these claims (i.e., claims 13, 16–18, 20, and 21) together.[2, 3] We select independent claim 13 for review, with the remaining claims (i.e., claims 16–18, 20, and 21) standing or falling with claim 13. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 13 recites the step of generating a health assessment "based on" patient responses "with caregiver intervention" and also "without caregiver intervention." The Examiner relies on Lynn '064 for such teaching. Final Act. 2–3 (referencing the fifteen steps listed at Lynn '064 11:20–58).

Appellant states,

> Lynn '064 appears to disclose, for the sake of discussion, generating, in a first run, a first health assessment based on the patient's recovery responses with caregiver intervention . . . and generating, in a second run, a second health assessment based on the patient's recovery responses without caregiver intervention.

Appeal Br. 7–8; Reply Br. 4. Thus, Appellant is acknowledging Lynn '064's teaching of both the "with" and "without" caregiver limitation.

However, Appellant explains, "Applicants respectfully submit that such interpretation of Lynn '064 does not support a conclusion that Lynn '064 teaches or suggests that a health assessment is *based on* at least the

[2] Regarding claim 16 (which depends from claim 13), Appellant repeats arguments previously presented and does not present a separate argument regarding the additional limitations recited in claim 16. *See* Appeal Br. 8.
[3] Regarding dependent claim 21, Appellant's arguments are a repeat of arguments presented with respect to claim 13. *See* Appeal Br. 11–12; Reply Br. 9–11.

patient's recovery responses with caregiver intervention and the patient's recovery responses without caregiver intervention." Appeal Br. 8; Reply Br. 5 (emphasis added).

To better understand the following analysis, the fifteen steps recited in Lynn '064 require further description. Steps 1–13 identify certain procedures to follow and actions to take (e.g., attach an oximeter, define intervals, baseline ranges, events, etc.). Lynn '064 11:20–54. Step 14 instructs to "[t]reat the sleep apnea . . . based on a diagnosis," which constitutes caregiver intervention within the meaning of the claims. Lynn '064 11:55–56; *see also* Ans. 4. Step 15 states "[r]epeat steps 1–14 to confirm the diagnosis and efficacy of treatment." Lynn '064 11:57–58; *see also* Ans. 4. Regarding the step 15 instruction to "confirm the diagnosis and efficacy of treatment," Appellant does not explain how such confirmation could be undertaken unless the initial and then repeated steps are compared. In other words, Appellant does not show how Lynn '064's teaching of ascertaining proper treatment (*see, e.g.*, Lynn '064 Abstract) could be accomplished without such treatment being "based on" these repeat-to-confirm results. *See also* Ans. 4–5.

Appellant additionally contends, "there is no suggestion in Lynn '064 as to whether steps 1–14 are performed in multiple cycles in which one cycle is with caregiver intervention and another cycle[] is without caregiver intervention." Appeal Br. 7; *see also id.* and Reply Br. 3 (Both arguing "there is no indication that multiple iterations of these steps are performed both with caregiver intervention and without caregiver intervention."). This contention is contrary to the above acknowledgement that Lynn '064 discloses both situations. Further, the Examiner identified which steps are

the "with" cycle and which steps are the "without" cycle, stating, "first performs steps 1–13 to obtain data without caregiver intervention and after treatment [(i.e., after step 14)], with caregiver intervention, repeat steps 1–14 to confirm." Final Act. 3; *see also id.* at 9, Ans. 3.

Accordingly, and based on the record presented, we are not persuaded the Examiner erred in rejecting claims 13, 16–18, 20, and 21 as anticipated by Lynn '064.

The rejection of claims 1, 3–7, 9, and 22–28 as unpatentable over Lynn '064 and Lynn '144

Both independent claims 1 and 24 include (which claim 13 does not) a limitation directed to a "display." The Examiner relies on Lynn '144 for such "display" teachings. *See* Final Act. 5. Regarding claim 1, Appellant repeats the arguments addressed above concerning the generation of an assessment "based on" responses "with caregiver intervention" and also "without caregiver intervention." Appeal Br. 9; *see also* Reply Br. 6–8. We do not change our analysis in this matter. No further arguments are presented on behalf of independent claim 1. *See* Appeal Br. 9–10.

Regarding dependent claim 3, the Examiner relies on Lynn '144 for such additional recitations. *See* Final Act. 6. Appellant, however, again references the arguments made above regarding the performance of multiple cycles "in which one cycle is with caregiver intervention and another cycle[] is without caregiver intervention." Appeal Br. 10; *see also* Reply Br. 8–9. Again, for the reasons expressed above, we do not change our analysis.

Regarding claims 4–7, 9, 22, and 23 (all of which depend from claim 1), no further separate argument is presented. *See* Appeal Br. 10; Reply Br. 9. Instead, Appellant contends that these claims are allowable "for at least

the reasons set forth above." Appeal Br. 10; Reply Br. 9. We are not persuaded by such contentions.

Claim 25 is similar to claim 3 above. *See* Appeal Br. 12; Reply Br. 12. We are not persuaded of Examiner error for similar reasons.

Claims 26–28 depend from independent claim 24. Appellant argues that claim 24 "is believed to be allowable over the references of record for at least the reasons set forth above." Appeal Br. 12; Reply Br. 12. Such statements are not persuasive of Examiner error.

Accordingly, and based on the record presented, we sustain the Examiner's rejection of claims 1, 3–7, 9, and 22–28 as unpatentable over Lynn '064 and Lynn '144.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
13, 16–18, 20, 21	102(b)	Lynn '064	13, 16–18, 20, 21	
1, 3–7, 9, 22–28	103(a)	Lynn '064, Lynn '144	1, 3–7, 9, 22–28	
Overall Outcome			1, 3–7, 9, 13, 16–18, 20–28	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED