UNITED STATES PATENT AND TRADEMARK OFFICE

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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 FRÉDÉRIC POIRIER and ALAIN GOULET

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Appeal 2019-003779
Application 13/582,878
Technology Center 2400

_____

Before JAMES R. HUGHES, JOHNNY A. KUMAR, and
CATHERINE SHIANG, *Administrative Patent Judges*.

KUMAR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–16 and 18, 19. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Final Office Action ("Final Act.," mailed February 27, 2018), the Appeal Brief ("Appeal Br.," filed September 11, 2019), the Examiner's Answer ("Ans.," mailed February 11, 2019) and Appellant's Reply Brief ("Reply Br.," filed April 11, 2019). We have considered in this decision only those arguments Appellant actually raised in the Briefs. Any other arguments which Appellant could have made, but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Exemplary Claim

An understanding of the invention can be derived from a reading of illustrative claim 1, which is reproduced below. Claim 11 recites similar subject matter.

> 1.   A system for verifying medication doses in a filled medication package having a plurality of compartments, the plurality of compartments arranged in the filled medication package to define a plurality of rows, with each said row comprising a plurality of compartments to form a grid of compartments, each compartment in the grid being assigned a time period and a dose of medication consisting of a plurality of pills in accordance with a prescription, the system comprising:
>   an imaging unit to produce at least one image of the filled medication package;

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. According to Appellant, RVX, Inc. is the real party in interest. Appeal Br. 2.

a verification unit communicating with the imaging unit to receive therefrom the at least one image of the filled medication package, the verification unit having a verification processor having stored thereon applications executable by the verification processor, the applications comprising:

a dose locator to determine from the at least one image a location of any compartment of the filled medication package in the grid, and to associate with the location in the grid an image of the pills in said compartment and a time period based on the location in the grid; and

a dose verifier to determine an identity of each pill in said compartment using visual characteristics of the at least one image of the pills, the identity of said pills being determined by comparing the image of said pills to a database of visual characteristics of known pill reference profiles, the verification processor comparing the identity and time period of said pill of said compartment to the prescription; and an interface for producing verification output based on the comparison of the verification unit.

Rejections[2]

Claims 1–16 and 18, 19 are rejected under 35 U.S.C. §112(a) or 35 U.S.C. §112 (pre-AIA), first paragraph, as failing to comply with the written description requirement.

Claims 1–11, 13–16, and 18, 19 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Bear et al. (US 8,583,281 B2, issued November 12, 2013) in view of Alouani et al. (US 7,028,723 B1, issued April 18, 2006).

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[2] The rejection of claims 1–16 and 18–19 under 35 U.S.C. § 101 has been withdrawn by the Examiner. Ans. 3. Also, our reference to page numbers is based upon the cover page of the Answer being page 1, as the Answer does not contain any page numbers.

Claim 12 is rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Bear in view of Alouani and further in view of Kumar (US 5,963,664, issued October 5, 1999).

ANALYSIS

We have only considered those arguments that Appellant actually raised in the Briefs.[3]

35 U.S.C. § 112(a) – Written Description

Claim 1 recites, in pertinent part, "a dose locator to **determine from the at least one image** a location of any compartment of the filled medication package in the grid." Appeal Br. 12 (Claims Appendix) (emphasis added).

The Examiner finds that determining a position of a compartment based on the image is not described in the Specification of the current application. Ans. 3.

We disagree. "[T]he description requirement does not demand any particular form of disclosure, or that the specification recite the claimed invention *in haec verba*." *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1352 (Fed. Cir. 2010) (en banc) (citation omitted). Rather, "the test for sufficiency is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date." *Ariad*, 598 F.3d at 1351.

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[3] Claims 2–10, 12–16 and 18, 19 are not argued separately from claims 1 and 11 in either Appellant's briefs (Appeal Br. 7–11; Reply Br. 2–6), and will not be separately addressed.

Appellant contends:

> In arguing the rejection, Examiner has focused on parts of the specification that teach alternative embodiments and alternative ways of determining "a location of any compartment" as claimed, and has ignored the parts of the specification that teach that in at least one embodiment a single image of a filled package may be sufficient:

> > *[0034] ... In an embodiment, the imaging unit 11 comprises a camera 11A positioned above the filled package A to take a <u>plan view of the filled package</u>. As the medication packages such as medication trays and blister cards may have compartments that are relatively large, a plan view may be sufficient to show all tablets and pills for subsequent identification. The camera produces an image of the tablets . ...*

> > [0035]… *According to an embodiment, at least one image of each compartment of the filled package A is obtained, with coordinates of the camera 11A being tagged with the image by the monitoring of the actuators 11 B. It may also <u>be considered to take multiple images</u> of each single compartment, to obtain different focusing and ensure that the doses will ultimately be identified.*

Reply Br. 2–3 (citing to Spec. ¶¶ 34, 35).

We agree with the Appellant that Paragraphs 34 and 35 of the Specification show determining a position of a compartment based on the image. *Id.* Because we find Paragraphs 34 and 35 in the Specification provides sufficient written description support to show possession of the claimed subject matter, we determine the Examiner's analysis fails to demonstrate that claims 1–16, and 18–19 lack written description support.

Thus, we do not sustain the Examiner's rejection of claims 1–16, and 18–19 under 35 U.S.C. § 112 (a).

35 U.S.C. § 103 – Obviousness

We have reviewed the Examiner's obviousness rejections of claims 1–16, and 18, 19 in light of Appellant's contentions that the Examiner has erred.

Further, we have reviewed the Examiner's response to Appellant's arguments. The Examiner has provided a comprehensive response to each argument presented by the Appellant on pages 2 through 9 of the Answer. We have reviewed this response and concur with the Examiner's findings and conclusions. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Final Action and Answer in response to Appellant's Appeal Brief. Final Act. 12–19; Ans. 7–9. We have considered Appellant's Reply Brief, but find it unpersuasive to rebut the Examiner's responses. We highlight and address specific findings and arguments for emphasis as follows.

Claim 1 recites, in pertinent part, "a dose locator to determine from the at least one image a location of any compartment of the filled medication package in the grid, and to *associate with the location* in the grid an image of the pills in said compartment and a *time period* based on the location in the grid," (hereinafter location/time period limitation) and "the identity of said pills being determined by comparing the image of said pills to a database of visual characteristics of known pill reference profiles… comparing the identity and time period of said pill of said compartment to

the prescription;" (hereinafter image comparing limitation) (Appeal Br. 12 (Claims Appendix)).

Based on Appellant's arguments in the briefs (Appeal Br. 9–11; Reply Br. 3–6), the principal and dispositive issue of whether the Examiner erred in rejecting claim 1 (and claim 11) turns on whether the combination of Bear and Alouani teaches the above disputed location/time period and image comparing limitations.

In particular, Appellant contends "Bear does not discuss at any point associating a time period to a compartment." Appeal Br. 9.

We disagree with Appellant.

The Examiner determines:

> Bear also associates an intake period with the compartment because the intake period that is on the compartment is analyzed by the image device and the acquired image is compared to the user's profile medication dosage schedule to determine user's compliance in taking medication (Col.13 lines 13-22).

Ans. 8.

In particular, Bear discloses:

> In one embodiment, the images captured by the PillStation dispenser originally are stored in local memory and then transmitted to the central monitoring station. At the central monitoring station, image recognition software (e.g., OCR and other software) may be utilized to determine the type/number of pills left. Each *PillStation dispenser preferably has a unique ID number* and a password, allowing the PillStation dispenser to be *linked* automatically to the correct user profile and medication dosage *schedule*. The data analyzed by the image recognition software then may be compared to the user's profile

medication dosage schedule to determine the user's compliance
in taking medication.

Bear, col. 13, ll. 11–22. (emphasis added).

In other words, Bear's teaching of linking the PillStation dispenser to
a medication dosage schedule meets the location/time period limitation.

Appellant also contends "Bear does not describe verifying the images
against a prescription." App. Br. 11.

The Examiner determines, and we agree that Bear teaches the images
comparing limitation:

> Bear discloses an image recognition software analyzing the type
> and number of pills left in a compartment and compares the
> analyzed imaged to the user's profile medication dosage
> schedule to determine user's compliance in taking medication
> (Col.13 lines 13-22), wherein the user profiles include details of
> user's medication information including dosage schedule (Col.
> 10 lines 38-39). Therefore, Bear discloses comparing the type
> of imaged pill with the intake period displayed on the
> compartment with the prescription within the user's profile.

Ans. 9.

> We also agree with the Examiner that:

> Alouani teaches the identity of said pills being determined by
> comparing the image of said pills to a database of visual characteristics
> of known pill reference profiles (Col.3 lines 30-35 determine a level of
> accuracy of the filled prescription based on the actual image
> information relative to corresponding expected image information,
> wherein the image information contains direction 66).

Final Act. 14.

For the reasons set forth above, we agree with the Examiner that the
combination of Bear and Alouani would have taught or suggested all of the

contested limitations of representative claim 1 to one of ordinary skill in the art.

DECISION

The Examiner's decision to reject claims 1–16, and 18, 19 under 35 U.S.C. §112, first paragraph for lack of written description is reversed.

The Examiner's obviousness rejections of claims 1–16, and 18, 19 are affirmed.

CONCLUSION

In summary:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–16, 18, 19	112, first paragraph	Written Description		1–16, 18, 19
1–11, 13–16, 18, 19	103(a)	Bear, Alouani	1–11, 13–16, 18, 19	
12	103(a)	Bear, Alouani, Kumar	12	
Overall Outcome			1–16, 18, 19	

TIME PERIOD FOR RESPONSE

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).

AFFIRMED