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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL S. KEEN, ELIZA C. BLOCK, and GUY L. TRIBBLE

Appeal 2019–004069
Application 14/499,512
Technology Center 3600

Before HUBERT C. LORIN, AMEE A. SHAH, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] seeks our review under 35 U.S.C. § 134 of the Non-Final Rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM–IN–PART.

THE INVENTION

[1] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42(a). The Appellant identifies Apple, Inc. as the real party in interest. Appeal Br. 4.

Claim 1 is illustrative, and is reproduced below:

1. A computer-implemented method, comprising:

maintaining, by a computer system, a plurality of data types associated with data collected by a data collection accessory and stored on a user device in communication with the data collection accessory, the data collection accessory linked to a third-party application of the user device;

transmitting, by the computer system, first health information associated with at least a subset of the plurality of data types for storage on the user device;

receiving, from the user device, an indication of receipt of new health information corresponding to a new data type received by the user device from the third-party application, the user device configured to store the new health information on behalf of the third-party application;

receiving, from the user device, an indication of a third-party application request, to the user device, for the new health information that corresponds to the new data type, the third-party application request including information about the new data type;

identifying that the new data type being requested for use by the third-party application of the user device is not one of the plurality of data types; and

providing an asset download to the user device for a background process of the user device to interpret and for configuring the background process of the user device to implement the new data type and manage the new health information corresponding to the new data type at least in response to the third-party application request, the asset download identifying the information about the new data type.

REFERENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
Nolan	US 2008/0104615 A1	May 1, 2008

THE REJECTIONS

The following rejections are before us for review:

Claims 14, 15, and 17–20 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1–20 are rejected under 35 U.S.C. § 103 as unpatentable over Nolan.

ANALYSIS

The rejection of claims 14, 15, and 17–20 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

This rejection appears on page 3 of the April 12, 2018 Non–Final action. We can find no indication that this rejection has been withdrawn. We note that the Examiner withdrew a separate rejection under 35 U.S.C. § 101 for patent–eligibility. *See* Ans. 12. But this rejection was for another purpose; that is, "[w]hen the broadest reasonable interpretation of claim covers a signal per se, the claim must be rejected under 35 U.S.C. 101 as covering non-statutory subject matter." Non-Final Act. 5. Accordingly, we consider this rejection as pending and before us on appeal.

In that regard, it does not appear that Appellant has responded to the merits of this rejection. Accordingly, it is summarily affirmed.

The rejection of claims 1–20 under 35 U.S.C. § 103 as unpatentable over Nolan.

The independent claims are 1, 7, and 14. They parallel each other and the Examiner's position as to all three is the same. Non–Final Act. 11

("Claims 7 and 14 are rejected as the same reason with claim1.")

Claim 1, and similarly for claims 7 and 14, calls for "[a] data collection accessory linked to a third-party application of [a] user device." The Examiner cites paras. 29 and 51 of Nolan as evidence that Nolan discloses said limitation. *Id*. at 6–7. We reproduce said passages below.

> [0029] The routine packaging component 214 can provide a number of different functionalities to aid an application developer in utilizing the API 200 to create a third party application. For example, the routine packaging component 214 can tie together a set of commonly utilized routines into a single call or present them in a packaged presentation to give the developer what they really need to get started with the API 200. Additionally, routines can be provided to create XML and associated schemas that are commonly used with the underlying system, such as a health integration network, to create things such as data types and different records to be stored in the network. Moreover, artificial intelligence can be employed to determine the packaging of routines or creation of additional easier-to-use routines. These created routines can be a single call provided to the developer to perform a somewhat enhanced task such as a single call to get related data that is not necessarily stored together, for example a GetLastExerciseRoutine can be created to retrieve a user's last exercise session information as well as any heart rate taken around this time. As mentioned, a determination can be made (using artificial intelligence for example) that these functions are often called together, and then to create a single routine that accesses the data to make it easier for the application developer who may want this data together. It is to be appreciated that the aforementioned scenarios are just examples and the subject matter is not so limited.
>
> [0051] The API 700 can also expose a set of intelligent routines 712. The intelligent routines 712 can be created and tuned to specific applications or packages to aid API use in third party application development. An example routine can help a developer to create an XML schema for data that the application plans on utilizing. This can enable a developer to quickly add new possible data values, types, and containers. This can also be performed in a batch mode and the routine

> can associate this information with the application. These routines can also be created by third parties as add-ons to the API 700 to facilitate simple access to rich data. For example, a company can expose a public routine to access its proprietary data using its trade name in the routine call name to additionally create a monetary incentive to promote development exposing the valuable data. It is to be appreciated that the API 700 and some routines can be located remotely while others located proximal, on, or within an accessing application. In fact, some routines can be downloadable to a device to allow for more expanded functionality and easier-to-use, more efficient routines. These can come in packages or individually downloadable, or even as automatic updates and can also be part of a software development kit.

We have reviewed said Nolan passages and agree with Appellant.

The Examiner does not adequately explain what in Nolan equates to the claimed "data collection accessory" and "third-party application."

We note that Nolan discloses "routines [which] can be provided to create XML and associated schemas that are commonly used with the underlying system, such as a health integration network, to create things such as data types and different records to be stored in the network" (para. 29). Assuming the Examiner means to equate the disclosed "routines" with the claimed "data collection accessory," the question is whether these "routines" are, as the claims require, "*linked* to a third-party application." We do not see that disclosed. Para. 51 of Nolan describes other routines ("intelligent routines 72") which "can also be created by third parties as add-ons to the API 700 to facilitate simple access to rich data." Para. 51. But this disclosure fails to link those specific routines to a "data collection accessory."

Given nothing more by way of evidence disclosing or suggesting to one of ordinary skill in the art "[a] data collection accessory linked to a third-party application of [a] user device" as claimed, we do not sustain the

rejection.

For the foregoing reasons, the rejection of claims 1, 7, and 14 and the claims depending therefrom is not sustained.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
14, 15, 17–20	101		14, 15, 17–20	
1–20	103	Nolan		1–20
Overall Outcome			14, 15, 17–20	1–13, 16

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED–IN–PART