

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte OMID ABRI

Appeal 2014-001217¹
Application 12/270,462²
Technology Center 3600

Before BIBHU R. MOHANTY, KENNETH G. SCHOPFER, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–15 and 17–19. We have jurisdiction under 35 U.S.C. § 6(b).

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1. Our decision references Appellant's Appeal Brief ("Appeal Br.," filed June 24, 2013) and Reply Brief ("Reply Br.," filed October 25, 2013), the Examiner's Answer ("Ans.," mailed August 29, 2013), and Final Office Action ("Final Act.," mailed January 22, 2013).
 2. Appellant identifies How To Organize (H20) GMBH as the real party in interest (Appeal Br. 2). However, the assignee of record, on file with the USPTO is Karl Storz GMBH & CO. KG, based on a transaction recorded August 20, 2015 (*see* Reel/Frame 036407/0153).

We REVERSE.

CLAIMED INVENTION

Appellant's claimed invention relates generally "to a method as well as a device for documenting medical data" (Spec. ¶ 2).

Claim 1, reproduced below with added bracketing, is illustrative of the subject matter on appeal:

1. A method for documentation of medical data comprising:

[a] introducing data from an operating room, captured by at least one data entry device,

[b] activating a storage medium only in response to entry of a patient to be operated upon into said operating room;

[c] storing said data in said storage medium.

REJECTION

Claims 1–8, 15, 18, and 19 are rejected under 35 U.S.C. § 103(a) as unpatentable over Uchikubo (US 6,955,671 B2, iss. Oct. 18, 2005), Packert (US 7,667,606 B2, iss. Feb. 23, 2010), and Breazeale (US 2009/0204434 A1, pub. Aug. 13, 2009).

Claims 9, 10–14, and 17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Uchikubo, Packert, Breazeale, and Beck (US 2005/0203350 A1, pub. Sept. 15, 2005).

ANALYSIS

Independent claim 1 and dependent claims 2–9, 18, and 19

We are persuaded by Appellant's argument that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 103(a) because the combination of Uchikubo, Packert, and Breazeale fails to disclose or suggest

“activating a storage medium only in response to entry of a patient to be operated upon into said operating room,” as recited by limitation [b] in claim 1 (*see* Appeal Br. 5–16; *see also* Reply Br. 2–8).

In the Final Office Action, the Examiner acknowledges that “Uchikubo does not disclose activating a storage medium only in response to entry of a patient to be operated upon in said operating room” (Final Act. 2). To address this deficiency, the Examiner turns to Packert, at column 3, lines 15–43 and column 5, lines 7–17, as disclosing argued limitation [b] (*id.* 3). The Examiner then acknowledges that the combination of Uchikubo and Packert fail to disclose “in response to entry of a patient,” as required by limitation [b], and turns to Breazeale, at paragraph 29, to address the missing feature (*id.*). The Examiner concludes

it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate health care tracking as taught by Breazeale, JR. (‘434; Abstract) into the embodiment of remote surgery support system using endoscopic images viewed as taught by Uchikubo/Packert in order to monitor the responses indicative entry activities of the patient into the operating room and the combination would have yielded predictable results.

(*Id.*).

Uchikubo is directed to a remote surgery support system wherein a “surgical instrument **20** is used to perform surgery on [a] patient **7** for curing a lesion under observation through the endoscopic imaging apparatus **10**” (Uchikubo col. 3, ll. 64–67). Uchikubo discloses that its system “can record an endoscopic image captured by the video capture control unit **44**. When a recording instruction is given at the keyboard **34**, a still image is recorded in the HDD **41**” (*id.* col. 9, ll. 57–60).

Packert is directed “an RF -enabled surgical cart in an operating room environment to provide monitoring and records of the surgery and the equipment used by operating room personnel during a surgery” (Packert col. 1, ll. 16–19). Packert discloses using “radio frequency-enabled identification tag associated with each of a plurality of persons assigned to the surgical procedure, including for example, doctors, nurses, and/or the patient” (*id.* col. 2, ll. 62–65).

Breazeale “relate[s] generally to tracking patient or healthcare provider locations in a hospital or other healthcare facility or locale, and associating those locations with time” (Breazeale ¶ 29). Breazeale discloses utilizing an RFID tag associated with a patient in order to track and identify a patient’s location at certain times such as “entry by the patient into an operating room in which the patient had surgery” (*id.*). Breazeale discloses that “[t]he relevant tracked time-location data may then be used to determine how long the patient was in certain areas during certain portions of their stay, and that information may be used to produce accurate billing information for the patient” (*id.*).

We have reviewed the cited portions of Packert and Breazeale and agree with Appellant that neither Packert nor Breazeale, alone or in combination with Uchikubo, disclose or suggest the argued limitation. In particular, we fail to see, and the Examiner does not adequately explain, how the log created in Packert from monitoring RFID tags associated with people involved in a surgical procedure (e.g., doctors, nurses, patient) (*see* Packert col. 2, ll. 62–65) in combination with Breazeale’s similar disclosure regarding the use of RFID tags to track and identify a patient’s location at certain times such as “entry by the patient into an operating room in which

the patient had surgery” for billing purposes (*see* Breazeale ¶ 29) discloses or suggests “activating a storage medium only in response to entry of a patient to be operated upon into said operating room,” as recited by limitation [b] in claim 1. That is, we agree with Appellant (*see e.g.*, Appeal Br. 11–12) that none of the references provide any teaching or suggestion that the storage medium was not already active, i.e., recording, before a patient’s entry into an operating room. Therefore, although both Packert and Breazeale disclose identifying when a patient is in an operating room or enters an operating room, we find the combination of Uchikubo, Packert, and Breazeale fails to disclose or suggest “activating a storage medium only in response to entry of a patient to be operated upon into said operating room,” as claim 1 requires.

In view of the foregoing, we do not sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the Examiner’s rejections of claims 2–9, 18, and 19, which depend therefrom.

Independent claim 10 and dependent claims 11–14 and 17

Independent claim 10 includes a limitation similar to limitation [b] in independent claim 1. The Examiner’s rejection of independent claim 10 based on Beck, in addition to the combination of Uchikubo, Packert, and Breazeale, does not cure the above-discussed shortcomings of the combination of Uchikubo, Packert, and Breazeale identified by Appellant with respect to independent claim 1 (*see* Appeal Br. 14–15). Thus, for the same reasons, we also do not sustain the Examiner’s rejection of

Appeal 2014-001217
Application 12/270,462

independent claim 10 and claims 11–14 and 17, which depend therefrom,
under 35 U.S.C. § 103(a).

Independent claim 15

Independent claim 15 include language substantially similar to the language of independent claim 1, and is rejected based on the same rationale applied with respect to independent claim 1 (*see* Final Act. 3). Thus, for the same reasons, we also do not sustain the Examiner’s rejection of independent claim 15 under 35 U.S.C. § 103(a).

DECISION

The Examiner’s rejections of claims 1–15 and 17–19 under 35 U.S.C. § 103(a) is reversed.

REVERSED