

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GILES L. BARTON and PHILLIP POPE

Appeal No. 96-0899
Application 07/863,216¹

ON BRIEF

Before HAIRSTON, KRASS and CARMICHAEL, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

¹Application for patent filed April 3, 1992.

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This is a decision on appeal from the final rejection of claims 5 through 11. Claims 1 through 4, 12 and 13 have been cancelled.

The invention pertains to a patient tracking system for hospitals and is best understood from a review of representative independent claim 5 reproduced as follows:

5. A hospital patient tracking system comprising in combination:

a plurality of clusters of patient tracking modules, each said patient tracking module comprising:

(a) a predetermined number of coded selectively operable keys,

(b) a predetermined number of selectively operable visual indicators associated on a one-to-one basis with said coded selectively operable keys,

(c) a multi-character display,

a plurality of keyboard cluster controllers, each said keyboard cluster controller being connected to said coded selectively operable keys and said selectively operable visual indicators and all of said patient tracking modules within an associated cluster;

a like plurality of visual indicator cluster controllers, each said visual indicator cluster controller being connected to said coded selectively operable keys and said selectively operable visual indicators in all of said patient tracking modules within its associated cluster;

a like plurality of multi-character display cluster controllers, each said multi-character display cluster controller being connected to said multi-character display in all of said patient tracking modules within an associated cluster;

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at least one console keyboard and an associated console keyboard controller in each said cluster;

a central controller connected to each one of said keyboard and visual indicator cluster controllers, each one of said multi-character display cluster controllers; and said console keyboard controller for providing data to, and receiving data from said cluster controllers and said console keyboard controller said central controller including a memory for storing a plurality of patient identifiers and for associating each particular one of said patient identifiers with a particular one of said patient tracking modules within a particular one of said plurality of clusters.

The examiner relies on the following references:

Waters et al. (Waters)	4,225,852	Sep. 30, 1980
Burnett	4,418,334	Nov. 29, 1983
Auer et al. (Auer)	4,725,694	Feb. 16, 1988
Fu et al. (Fu)	4,803,625	Feb. 7, 1989
Shipley	4,967,195	Oct. 30, 1990
Brimm et al. (Brimm)	5,072,383	Dec. 10, 1991
Kukla	5,101,476	Mar. 31, 1992

Claims 5 through 11 stand rejected under 35 U.S.C. 103 as unpatentable over Auer in view of common practice, as exemplified by various references cited by the examiner in explaining the rejection.²

²Normally, references not forming part of the stated rejection are given no consideration, In re Hoch, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970). However, in the instant case, appellants appear to be well aware of the examiner's reliance on these references as indicated by the arguments in the brief. Therefore, we will not dismiss these references out of hand.

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A rejection based on the first paragraph of 35 U.S.C. 112 was withdrawn by the examiner and forms no part of this appeal.

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

Initially, we note that, in accordance with appellants' grouping of claims at pages 6-7 of the brief, claims 5 and 7 stand or fall together, claims 8 and 9 stand or fall together, claim 10 stands alone and, while claims 6 and 11 are said to stand or fall together, in reality, one may stand and one may fall, depending on the finding of patentability regarding the claims from which they separately depend.

Turning first to independent claim 5, the examiner relies on columns 3-5 and Figures 6, 8 and 9 of Auer and contends that the wards which comprise a plurality of the bedside terminals correspond to the claimed clusters and controllers while the larger computers, identified as 71 and 72 in Auer, correspond to the claimed central controller and console keyboard and controller. The examiner recognizes that "Auer does not specify that the cluster, patient ID, and patient module are

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stored in the central memory" [answer, page 4] but contends that it is well known "to store this type of addressing and location information...for the purpose of locating a patient..." [answer, page 4] and this much is not denied by appellants.

Appellants argue that Auer does not disclose a hospital patient tracking system that comprises a plurality of clusters of patient tracking modules [brief, pages 8-9]. However, the examiner has explained, reasonably in our view, that a "cluster," in Auer, is a ward which comprises several bedside terminals. Such an interpretation of "cluster" is not inconsistent with appellants' own definition, at page 9 of the brief, from Webster's Ninth New Collegiate Dictionary since each ward in Auer comprises "things [bedside terminals 10]...grouped closely together." The term "closely" is a relative term and, while appellants intend, and, in fact, disclose, patient tracking modules which are closer than those in Auer, this does not nullify the interpretation that Auer's bedside terminals are close together in the sense of being in the same ward.

Appellants argue that "it does violence to Applicant's disclosed invention...to argue that the reconfigurable keyboard/display devices of Auer...constitute a "cluster" of patient tracking modules simply because they are briefly

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disclosed as being commonly connected to a mini computer sitting in a hospital ward" [brief, page 9-emphasis ours]. However, as broadly recited in claim 5, we agree with the examiner that Auer does, indeed, disclose a "cluster" and we will not read limitations of appellants' specification into the claim where there is no express statement of the limitations included in the claim. In re Priest, 582 F.2d 33, 37, 199 USPQ 11, 15 (CCPA 1978); In re Prater, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969); In re Winkhaus, 527 F.2d 637, 639, 188 USPQ 129, 130-31 (CCPA 1975).

Moreover, appellants apparently agree that Auer "briefly discloses" that the keyboard/display devices are commonly connected to the mini computer of the hospital ward. Therefore, Auer teaches a "cluster" whether the connections are "briefly" disclosed or disclosed in greater detail. Since the bedside terminals in Auer have the same information as a conventional clipboard, i.e., patient data, and these terminals are interconnected, through mini computers, to the mainframe computers 71 and 72, where information is shared, each bedside terminal in Auer is reasonably considered to be a "patient tracking system," as claimed.

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Appellants also argue that claim 5, as well as claim 10, requires that each module includes the selectively operable order keys, associated visual indicators and a multi-character display. However, this is exactly what Auer teaches, albeit not as disclosed by appellants, wherein the touch-sensitive display surface of the bedside terminals has a plurality of touch-sensitive areas thereon and each area is a "selectively operable order key." Also, the visual indication resulting from the touch of each of these areas is an "associated visual indicator" and the display, showing alphanumeric characters, is clearly a "multi-character display," as claimed.

At pages 9-10 of the brief, appellants present arguments relative to the object of the present invention as set forth in the instant specification. However, as explained supra, it is not the object of an invention as presented in the specification against which we apply the prior art but, rather, the prior art is applied against the invention, as set forth in the claims. Appellants' arguments are not commensurate with the claimed invention as set forth in claim 5.

Accordingly, we will sustain the rejection of claim 5, as well as that of claim 7, under 35 U.S.C. 103.

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With regard to claim 6, appellants argue that the second plurality of keys recited therein are distinguishable "and distinguished by the specification, from the first recited set" [brief, page 11]. We agree with the examiner that the function keys of Auer (each key has some function) may be considered to be two groups of function keys, i.e., a first and second predetermined number of function keys, and that the "second predetermined number of function keys," set forth in claim 6, is indistinguishable from a first such set. There is nothing set forth in claim 6 which distinguishes these functions from any other functions of the first predetermined number of operable keys. While appellants explain, at pages 11-12 of the brief, that the specification discloses two pluralities of keys and that two right-hand, nonilluminated keys, MOVE and ENTER keys, are the function keys, none of this forms part of instant claim 6 and, again, we will not read the disclosed limitations into the claims where the claims do not include such limitations.

Accordingly, we will sustain the rejection of claim 6 under 35 U.S.C. 103.

Turning now to claim 8, this claim calls for, inter alia, the coded selectively operable keys to correspond to a predetermined physician order, that the controllers are

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responsive to operation of a particular one of the keys to buffer and store a key activation packet that is passed onto the central controller in response to a polling request. The claim also requires the central controller to generate an indicator control packet that is sent to a particular keyboard and visual indicator cluster controller in response to receipt of the key activation packet.

While the examiner has cited various references for teachings of polling, entering of physician instructions into a computer system and electrical communication between rooms and a central location, it is not at all clear how the examiner intends to modify Auer with this combination of teachings in order to arrive at the claimed subject matter. We would agree with the examiner that polling techniques and general communication by physicians and between rooms and central locations are generally known. However, this does not explain how the artisan would have been led to the very specific communication system set forth in claim 8 wherein each of the claimed coded selectively operable keys corresponds to a predetermined physician order, wherein a key activation packet is buffered and stored in response to operation of one of the keys and wherein the central controller is responsive to the receipt of the key activation packet to

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generate an indicator control packet that is sent to a particular keyboard and visual indicator cluster controller.

Thus, with regard to claim 8, and claim 9 which depends therefrom, the examiner has failed to present a prima facie case of obviousness and, accordingly, we will not sustain the examiner's rejection of claims 8 and 9 under 35 U.S.C. 103.

Finally, we turn to independent claim 10. This claim is similar to independent claim 5 but requires that each of the plurality of clusters of patient tracking modules comprise "a rectilinear array" of modules. While Auer clearly does not show such a "rectilinear array," the examiner contends [answer, page 7] that the artisan would have recognized "that the arrangement of terminals would obviously be in a rectilinear array." We disagree.

Such a rectilinear array is clearly not shown or suggested by Auer since each bedside terminal in Auer is in a separate room and while we interpreted the term "cluster," with regard to claim 5, as broadly recited, to include a ward comprising a plurality of these bedside terminals, claim 10 is more specific in requiring each cluster to comprise a rectilinear array of patient tracking modules. Since there is nothing in Auer to suggest placing the bedside terminals in clusters

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comprising rectilinear arrays, we hold that the examiner has not established a prima facie case of obviousness with regard to the claimed subject matter of instant claim 10 and we will not sustain the rejection of claim 10 under 35 U.S.C. 103.

Accordingly, we also will not sustain the rejection of claim 11, which depends from claim 10, under 35 U.S.C. 103.

CONCLUSION

We have sustained the rejection of claims 5 through 7 under 35 U.S.C. 103 but we have not sustained the rejection of claims 8 through 11 under 35 U.S.C. 103.

Accordingly, the examiner's decision is affirmed-in-part.

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

AFFIRMED-IN-PART

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Administrative Patent Judge)	
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ERROL A. KRASS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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)	
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