

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 SHOJI KANADA

Appeal No. 2003-1706
Application No. 09/672,826

HEARD: February 5, 2004

Before JERRY SMITH, GROSS, and LEVY, ***Administrative Patent Judges***.
GROSS, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 62 and 68 through 78. Claims 63 through 67 are withdrawn from consideration.

Appellant's invention relates to a medical image server and searching method. The server includes pre-fetching judging means for determining whether or not a stored past image is necessary before the terminal sends an order for output of the image. The server further includes judging means for determining whether or not image processing is necessary for a searched image. The server also includes control means for transmitting to the image

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display terminal a) a location of the image in the database, when image processing has been found to be unnecessary or b) that the image is located in the storing means while obtaining the image from the database for image processing, when image processing has been found to be necessary. In addition, each image display terminal has a setting defining whether only the storing means or the storing means as well as the database are to be searched. The searching method includes converting search information received from the search requesting apparatus to a character type which is used by the database and is different from a character type used by the search requesting apparatus. Claims 1, 68, 69, and 73 are illustrative of the claimed invention, and they read as follows:

1. A medical image server comprising image acquisition means for fetching an image from an image archiving apparatus storing medical images, storing means for storing the image having been fetched, and delivering means for outputting the image stored in the storing means to a terminal, the medical image server further comprising:

pre-fetching judging means for carrying out judgment as to whether acquisition of a past image of a patient which is stored in the image archiving apparatus is necessary or unnecessary before the terminal actually sends an order for output of the image, based on information regarding a medical examination order and/or photographing of the patient; and

pre-fetching image selecting means for selecting an image of the patient from past images stored in the image archiving apparatus based on the information regarding the medical

examination order and/or photographing in the case where the pre-fetching judging means has judged the acquisition to be necessary, and for causing the image acquisition means to fetch the selected image.

68. A medical image searching method used in a medical image search apparatus connected to a search requesting apparatus and to a database storing medical images with text information, for searching the database for a desired image according to search information from the search requesting apparatus and for sending a search result including text information to the search requesting apparatus, the medical image searching method comprising the steps of:

searching for the desired image after converting search information received from the search requesting apparatus to search information in a character type used by the database and different from a character type used by the search requesting apparatus; and

sending the search result to the search requesting apparatus after the search result has been converted into the character type used by the search requesting apparatus.

69. An image search server connected to an image display terminal and to a database storing images, for carrying out a search of the database in response to a request of the image display terminal and for outputting a search result to the terminal, the image search server comprising:

image processing means for carrying out predetermined image processing on the image obtained by the search;

storing means for storing the image having been subjected to the image processing by the image processing means;

judging means for judging whether or not image processing is necessary for the image having been searched for; and

control means for transmitting to the image display terminal a search result including information indicating a location of the image in the database in the case where the judging means has judged image processing to be unnecessary or for transmitting a

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search result including information indicating that the image is located in the storing means while obtaining the image from the database for causing the image to be subjected to the image processing by the image processing means in the case where the judging means has judged the image processing to be necessary.

73. An image search server connected to a database storing images and to a plurality of image display terminals, for searching the database in response to a search request of any of the image display terminals and for outputting a search result to the image display terminal, the image search server comprising:

storing means for storing an image obtained from the database; and

control means having, for each of the image display terminals, setting defining whether only the storing means or the storing means as well as the database, are searched, and for determining where to search according to the setting for each terminal.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Taguchi et al. (Taguchi) 5,807,256 Sep. 15, 1998

Claims 1 through 62 and 68 through 78 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Taguchi.

Reference is made to the Examiner's Answer (Paper No. 15, mailed March 25, 2003) for the examiner's complete reasoning in support of the rejection, and to appellant's Brief (Paper No. 14, filed January 31, 2003) and Reply Brief (Paper No. 17, filed May 27, 2003) for appellant's arguments thereagainst.

OPINION

We have carefully considered the claims, the applied prior art reference, and the respective positions articulated by appellant and the examiner. As a consequence of our review, we will reverse the anticipation rejection of claims 1 through 62 and 68 through 78.

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim." *In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). *See also Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984). Thus, if any limitation is lacking from the reference, the claim cannot be anticipated.

Independent claim 1 recites, in pertinent part, a pre-fetching judging means for judging before the terminal orders output of an image whether the stored image is necessary. The examiner relies (Final Rejection, page 2) on portions of columns 6, 33, 34, 36, and 37 for such pre-fetching judging means (with no explanation as to how the various portions of Taguchi satisfy the claim language). Appellant argues (Brief, page 8) that no pre-fetching exists in Taguchi and explains (Brief, pages 8-10) how each cited portion supports that the relevant medical image

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must have been retrieved previously by order of an operator. The examiner responds (Answer, page 3) that in column 25, lines 16-36, "Taguchi discloses that images are input into a system (PACS) and stored in a database. The image is then interpreted and judged. The image in [sic] interpreted before an order and sending it to the doctor."

We agree with appellant's interpretation of the cited portions of Taguchi. As pointed out by appellant, the actions in Taguchi occur after the image has been retrieved. Further, regarding the examiner's statements in the answer, Taguchi's image has already been retrieved to perform the analysis and is analyzed to detect abnormalities, not judged as to whether it needs to be retrieved, as claimed. As Taguchi fails to disclose the claimed pre-fetching judging means, Taguchi does not anticipate claim 1. Consequently, we cannot sustain the rejection of claim 1 or its dependents, claims 2 through 59, 77, and 78. In addition, as claim 60 includes the same limitation found lacking from Taguchi for claim 1, we will not sustain the rejection of claim 60 or its dependents, claims 61 and 62.

Independent claim 68 recites, in pertinent part, a dual-type character search. The examiner (Final Rejection, page 12) points to Figures 61 and 62A, columns 13, 14, 34, 37, 38, and part of

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columns 42 and 104 (again with no explanation as to how any of the noted sections correspond to the claim limitation).

Appellant (Brief, pages 13-14) again sets forth why each portion cited by the examiner fails to satisfy the claim limitation. The examiner responds (Answer, page 4) that in Taguchi "the search for an image is done using a character types [sic] and the image is of a binary type." However, the format (i.e., binary) of the stored image is different from the character type of the search information. We agree with appellant's analysis of the portions cited by the examiner, and we find nothing in the reference that indicates that the search requesting apparatus uses a different character type than the database. Since Taguchi fails to disclose each and every element of claim 68, we cannot sustain the anticipation rejection of claim 68.

Claim 69 recites, in pertinent part, judging means for determining whether or not image processing is necessary for the image and control means for transmitting a) the image from the database or b) the location of the image in the database, depending on whether or not image processing is judged to be necessary. The examiner (Final Rejection, page 13) points to Figures 125 and 127 and portions of columns 1, 53, 78, and 102 (without any explanation as to how those sections relate to the

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claim language). Appellant (Brief, pages 15-16) again evaluates each portion and explains why it fails to satisfy the claim language. The examiner responds (Answer, page 5), "Taguchi discloses such wherein detection of abnormalities are detected, image processing judging is deemed to be done."

The examiner appears to have missed the point of the claim. As explained by appellant (Brief, page 16), Taguchi does not describe any different treatment for data transmissions according to whether image processing is or is not necessary. Taguchi does not provide location information when no processing is desired, as required by claim 69. Thus, Taguchi fails to anticipate claim 69, and we cannot sustain the anticipation rejection thereof.

Claims 73 through 76 each recite either a means or a step for determining according to a pre-setting whether only the storing means or the storing means as well as the database are searched. The examiner (Final Rejection, page 15) directs our attention to portions of columns 13 and 18 (again without any explanation as to the relevance.) Appellant asserts (Brief, page 18) that neither column 13 nor column 18 discusses searching certain locations. The examiner (Answer, page 5) responds, "[I]f the user is only searching for non-image data, then he will not be searching the image database and if he is searching for both

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then he will be searching both databases." The examiner continues, "The settings of the terminal are deemed to be the criteria the user of the terminal is using to conduct his/her search."

We agree with appellant that neither column 13 nor column 18 discloses searching certain locations. Further, we also agree with appellant (Reply Brief, page 10) that nowhere does Taguchi disclose that a user searching for only non-image data will not search the image database. Therefore, we will not sustain the anticipation rejection of claims 73 through 76.

CONCLUSION

The decision of the examiner rejecting claims 1 through 62 and 68 through 78 under 35 U.S.C. § 102 is reversed.

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

REVERSED

JERRY SMITH)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ANITA PELLMAN GROSS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
STUART S. LEVY)	
Administrative Patent Judge)	

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