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**Datasheet for the decision
of 13 September 2011**

Case Number: T 0686/08 - 3.5.05

Application Number: 99967167.0

Publication Number: 1183586

IPC: G06F 19/00

Language of the proceedings: EN

Title of invention:

System and method for improving a risk for a monitored client

Applicant:

Health Hero Network, Inc.

Headword:

Improving a risk for a monitored client/HEALTH HERO NETWORK

Relevant legal provisions:

EPC Art. 52(1), 56, 106, 107, 108
RPBA Art. 15(3) and (6)

Keyword:

"Inventive step (no)"

Decisions cited:

T 0641/00

Catchword:

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Case Number: T 0686/08 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 13 September 2011

Appellant: Health Hero Network, Inc.
2400 Geng Road, Suite 200
Palo Alto
CA 94303 (US)

Representative: Cozens, Paul Dennis
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 31 October 2007
refusing European patent application
No. 99967167.0 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: A. Ritzka
Members: M. Höhn
F. Blumer

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division, dispatched on 31 October 2007, refusing European patent application No. 99967167.0 based on Articles 52(1), 54(2), 56 and 84 EPC 1973 having regard to the disclosure of

D1: US 5764923 A1,

D2: WO 98/40835 A1.

II. The notice of appeal was received on 9 January 2008. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 10 March 2008. The appellant requested that the appealed decision be set aside and that the application be granted (notice of appeal) or be remitted to the examining division on the basis of the set of claims 1 to 73 submitted with the statement setting out the grounds of appeal. Oral proceedings were requested on an auxiliary basis.

III. A summons to oral proceedings to be held on 13 September 2011 was issued on 11 May 2011. In an annex accompanying the summons the board expressed the preliminary opinion that the claimed subject-matter did not appear to fulfil the requirements of novelty and an inventive step in the light of the disclosures of D1 and D2.

The board gave its reasons for the objections and stated that the appellant's arguments were not convincing.

- IV. Independent claim 29 according to the sole request is directed to
- an apparatus having a central processing unit (CPU) and a memory coupled to said CPU for managing a health condition for a specific patient, said specific patient having a patient profile (250), said apparatus including:
- a) a selection mechanism configured to select said profile (250);
 - b) an evaluation mechanism configured to determine an association between said profile (250), determined by the selection mechanism, and a protocol domain space (200);
 - c) an access mechanism configured to access a protocol from said protocol domain space (200) responsive to said association; and
 - d) a presentation mechanism, responsive to the access mechanism, configured to present said protocol to said specific patient;
- characterised by:
- e) the apparatus further comprising means for determining a risk classification for the patient's health condition on the basis of said profile (250),
 - f) means for instructing the patient regarding the health condition in accordance with the protocol, and
 - g) an adjustment mechanism configured to adjust said profile (250) responsive to said protocol thereby to modify the risk classification associated with the health condition of said patient.

References a) to g) have been added to the wording of the claim by the board.

- V. By fax dated 9 September 2011 the appellant's representative informed the board that it would not be attending the oral proceedings.
- VI. The appellant requested in writing that the appealed decision be set aside and that the application be granted (notice of appeal) or be remitted to the examining division on the basis of the set of claims 1 to 73 submitted with the statement setting out the grounds of appeal. The appellant was informed in the communication dated 11 May 2011 that this was taken as a request that a patent be granted on the basis of the afore-mentioned set of claims. The appellant did not submit any substantial comment in reaction to the communication.
- VII. Oral proceedings were held on 13 September 2011 in the absence of the appellant. After due deliberation on the basis of the written submissions in the statement setting out the grounds of appeal and the request, the board announced its decision.

Reasons for the Decision

1. *Admissibility*

The appeal complies with the provisions of Articles 106 to 108 EPC (see Facts and Submissions, point II above). Therefore the appeal is admissible.

2. *Non-attendance at oral proceedings*

In its letter dated 9 September 2011 the appellant's representative announced that it would not be attending the oral proceedings. The board considered it expedient to maintain the date set for oral proceedings. Nobody attended the hearing on behalf of the appellant.

Article 15(3) RPBA stipulates that the board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

In the present case, the board was in a position to announce a decision at the conclusion of the oral proceedings as foreseen by Article 15(6) RPBA.

3. Inventive step - Articles 52(1) and 56 EPC

- 3.1 The wording used in the description and the claims, in particular the terms "patient profile", "protocol domain space", "protocol", "association between a profile and a protocol domain space" is considered to be vague and rather unspecific. The board interprets these terms as having a broad meaning.

3.2 D1 discloses a medical network management system and process. As is apparent from e.g. figure 2 and figure 8 onwards, the system is a software based system which in general involves the use of a computer with a CPU and memory coupled to it. The system serves for managing a health condition of a patient (see column 1, lines 13 to 25). For each patient there is a patient chart which is considered to be a patient profile according to claim 29, and which can be found from a database of patient charts (see e.g. column 17, lines 34 to 52). This involves a corresponding selection mechanism according to feature a). D1 further discloses the use of associated algorithms (see column 20, line 60 onwards) which correspond to an association between said profile and a protocol domain space according to feature b). Such associated algorithms, as part of a protocol domain, can be accessed responsive to an association (see selection, e.g. column 21, line 13 onwards) in accordance with feature c). Each selected algorithm is related to corresponding actions including self care instructions which are also considered to be part of the protocol domain. D1 also discloses a mechanism to display those self care instructions to the patient (see e.g. figure 26 and column 23, lines 46 to 49) according to features d) and f).

3.3 D1 further discloses means for making use of an automated risk assessment to help assess the patient's level of risk (see e.g. column 14, lines 61 to 63) which is regarded as determining a risk classification for the patient's health condition on the basis of the patient's profile according to feature e). D1 discloses a means for updating information in a patient's chart

(see column 19, lines 22 to 26) responsive to the protocol (see column 29, lines 30 to 33 where it is disclosed that the NMS system is suitable for performing an update, *inter alia*, after the call process) according to an adjustment mechanism configured to adjust the patient's profile in feature g).

- 3.4 D1 does not explicitly disclose that the adjustment of the profile serves the purpose of modifying the risk classification associated with the health condition of the patient.
- 3.5 In the board's view this is merely an intended use of the claimed system. The system disclosed in D1 as described above comprises all the means necessary for modifying the risk classification. The system in D1 is therefore considered to be suitable for modifying the risk classification associated with the health condition of said patient according to feature g).
- 3.6 The board regards modifying the risk classification associated with the health condition of said patient to be a medical, i.e. non-technical effect rather than a property of the claimed system.

According to decision T 641/00 (OJ EPO 2003, 352), mentioned in the decision under appeal, an invention consisting of a mixture of technical and non-technical features and having technical character as a whole, which is the case for present claim 29, is to be assessed with respect to the requirement of inventive step by taking account of all those features which contribute to said technical character whereas features

making no such contribution cannot support the presence of inventive step.

For the afore-mentioned reason the corresponding portion of feature g), i.e. that the adjustment of the profile serves the purpose of modifying the risk classification associated with the health condition of the patient, which does not contribute to the technical character of the claimed subject-matter, does not have any significance for the assessment of inventive step.

The subject-matter of claim 29 therefore lacks an inventive step with regard to the disclosure of D1.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:

A. Counillon

A. Ritzka