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**Datasheet for the decision
of 6 October 2016**

Case Number: T 0427/12 - 3.2.02

Application Number: 07763115.8

Publication Number: 1983890

IPC: A61B5/00

Language of the proceedings: EN

Title of invention:

MULTIUSER WELLNESS PARAMETER MONITORING SYSTEM

Applicant:

Cardiocom, LLC

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - allowable (no)

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 0427/12 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 6 October 2016

Appellant: Cardiocom, LLC
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Representative: Isarpatent
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 14 September 2011 refusing European patent application No. 07763115.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman E. Dufrasne
Members: C. Körber
M. Stern

Summary of Facts and Submissions

- I. On 14 September 2011 the Examining Division posted its decision to refuse European patent application No. 07763115.8.
- II. An appeal was lodged against this decision by the applicant by notice received on 2 November 2011, with the appeal fee being paid on the same day. The statement setting out the grounds of appeal was received on 13 January 2012.
- III. By communication of 20 June 2016, the Board issued its provisional opinion and summoned the appellant to oral proceedings.
- IV. With its letter dated 30 September 2016, the appellant filed third to sixth auxiliary requests and withdrew all previous requests.
- V. Oral proceedings were held on 6 October 2016, during which the appellant filed a main request and requested that the appealed decision be set aside and that a patent be granted on the basis of this main request or, in the alternative, one of the third to sixth auxiliary requests filed on 30 September 2016. The request, made in the statement of grounds of appeal, for remittal to the first instance on the ground of a "procedural error" by the Examining Division was withdrawn.
- VI. Claim 1 of the main request reads:

"A monitoring apparatus (4409, 4700, 4800, 4906) for monitoring a plurality of patients (4408) and establishing communication to a caregiver (4910)

regarding parameters of at least one of the plurality of patients (4408), the monitoring apparatus (4409, 4700, 4800, 4906) comprising:

- a physiological parameter transducing device (4518), the device generating an electronic signal representative of a value of a physiological parameter being monitored;
- a processor (4538) operatively coupled to the physiological parameter transducing device (4518) and processing the electronic signal;
- an electronic receiver/transmitter communication device (4536) operatively coupled to the processor (4538) and to a communication network (4534);
- an output device (4530, 4706, 4806) operatively coupled to the processor (4538) and providing a series of queries to the at least one of the plurality of patients (4408), and
- an input device (4528, 4706, 4806) operatively coupled to the processor (4538) and configured to receive inputs from the at least one of the plurality of patients (4408) in response to the series of queries output by the output device (4530, 4706, 4806);
- a patient identification device (4502, 4704, 4809) operatively coupled to the processor (4538) and configured to interface with an identifier associated with a patient to identify the patient from among the plurality of patients (4408),

the monitoring apparatus (4409, 4700, 4800, 4906) characterized in that:

- the processor (4538) is capable of receiving the electronic signal generated by the physiological parameter transducing device (4518) and inputs from the input device (4528, 4706, 4806), is capable of storing the electronic signal,

is capable of calculating a calculated score based on the electronic signal or of using the electronic signal as a measured score,
is capable of comparing the calculated score or the measured score, to a previously stored calculated score or the measured score, respectively, and
is capable of issuing an exception notifying a remote caregiver (4910) that the patient requires attention when the calculated score or the measured score, respectively, exceeds a threshold or falls beneath a threshold, or
when the calculated score or the measured score, respectively, on a given day differs from a calculated score or the measured score as measured or calculated on a previous day by more than a prescribed quantity."

Claim 1 of the third auxiliary request corresponds to that of the main request with the characterising portion amended to read as follows:

"characterized in that:
the processor (4538)
is capable of receiving the electronic signal generated by the physiological parameter transducing device (4518) and inputs from the input device (4528, 4706, 4806),
is capable of storing the electronic signal,
is capable of comparing the electronic signal to a previously stored electronic signal, and
is capable of issuing an exception notifying a remote caregiver (4910) that the patient requires attention when the electronic signal either exceeds or falls beneath a predetermined threshold."

Claim 1 of the fourth auxiliary request corresponds to that of the main request with the characterising portion amended to read as follows:

"characterized in that:
the processor (4538) is capable of receiving the electronic signal generated by the physiological parameter transducing device (4518) and inputs from the input device (4528, 4706, 4806), is capable of storing the electronic signal, is capable of comparing the electronic signal to a previously stored electronic signal, and is capable of issuing an exception notifying a remote caregiver (4910) that the patient requires attention when the electronic signal exceeds a threshold, or when the electronic signal falls beneath a threshold or when a score as measured or calculated on a given day differs from a score as measured or calculated on a previous day by more than a prescribed quantity."

Claim 1 of the fifth auxiliary request corresponds to that of the main request with the characterising portion amended to read as follows:

"characterized in that:
the processor (4538) is capable of receiving the electronic signal generated by the physiological parameter transducing device (4518) and inputs from the input device (4528, 4706, 4806), is capable of storing the electronic signal, is capable of comparing the electronic signal to a previously stored electronic signal, and is capable of issuing an exception notifying a remote caregiver (4910) that the patient requires attention when the electronic signal exceeds a predetermined threshold, or when the electronic signal

falls beneath a predetermined threshold, or when a score as measured or calculated on a given day differs from a score as measured or calculated on a previous day by more than a prescribed quantity, wherein the processor (4538) is programmed to: receive a symptom identifier via the communication device (4536), the symptom identifier related to historical wellness of the patient; based upon the symptom identifier, ask a first query from a hierarchy of queries corresponding to a symptom identified by the symptom identifier; receive an answer to the first query via the input device; and based upon the answer to the first query, make a decision regarding whether to ask a subsequent query from the hierarchy."

Claim 1 of the sixth auxiliary request corresponds to that of the main request with the characterising portion amended to read as follows:

"characterized in that:
the processor (4538) is capable of receiving the electronic signal generated by the physiological parameter transducing device (4518) and inputs from the input device (4528, 4706, 4806),
is capable of storing the electronic signal,
is capable of comparing the electronic signal to a previously stored electronic signal and
is capable of issuing an exception notifying a remote caregiver (4910) that the patient requires attention when the electronic signal exceeds a predetermined threshold,
the monitoring apparatus (4409, 4700, 4800, 4906) further comprising:

one or more application specific integrated circuits, the circuits, if an exception is issued, being capable of initiating and carrying out a verification process of the inputs provided by the patient and of additional data to determine whether or not the patient needs to consult with the caregiver (4910)."

VII. The appellant's arguments are summarised as follows:

A basis for the processor being "capable of calculating a calculated score based on the electronic signal or of using the electronic signal as a measured score" as defined in claim 1 of the main request could be found in the first paragraph of page 67 of the application as originally filed.

The last clause of claim 1 of the third auxiliary request had been amended to recite "when the electronic signal either exceeds or falls beneath a predetermined threshold." Lines 7 and 8 of page 67 stated that "An alert may be generated when the score exceeds a threshold (or falls beneath a threshold)". Further, it was indicated in the description in connection with Figure 39B that the threshold was predeterminable. The amendment was thus supported by the original disclosure.

Direct and unambiguous support for the added features of the sixth auxiliary request was provided in the patent application, at least in the description provided for Figures 36 and 37, at page 56, line 25 to page 63, line 6.

Reasons for the Decision

1. The appeal is admissible.
2. Amendments
 - 2.1 Main request

The characterising portion of claim 1 comprises the feature that the processor is "capable of calculating a calculated score based on the electronic signal or of using the electronic signal as a measured score". The first paragraph of page 67 of the application as originally filed (reference is made to the published version WO-A-2007/092212) is the only passage cited by the appellant to support this amendment. However, this paragraph does not provide a basis therefor since it does not refer at all to the "electronic signal".

The second paragraph of the preamble of claim 1 defines "a physiological parameter transducing device (4518), the device generating an electronic signal representative of a value of a physiological parameter being monitored". Accordingly, the "electronic signal" is obtained by the physiological parameter transducing device, i.e. it represents a measured quantity. This corresponds to what is stated in the paragraph bridging pages 12 and 13 about the transducing device including an electronic scale. Further examples of transducing devices in the form of blood pressure or electrocardiogram measurement apparatus are given in the penultimate paragraph of page 10.

In lines 2 to 5 of page 67 it is stated that the term "measured variable describes a quantifiable condition

or state of the patient's body". Various variables such as blood pressure or glucose are indicated as examples. These are undoubtedly "physiological parameters" which may be represented by the "electronic signal".

As an alternative, it is stated in lines 5 and 6 that the measured variable "may be a score describing a patient's self-reported symptoms (an example of a calculated variable)". In spite of the somewhat confusing term "measured variable", the skilled person reading this passage understands that a score is a variable which is calculated on the basis of certain symptoms reported by the patient. This corresponds to what is previously disclosed at page 21, line 15 to page 22, line 9 and in Table 5 regarding determining a "numerical score" and issuing an exception when the "total score" exceeds a certain threshold. However, there is no disclosure that this calculation is based on or somehow involves the "electronic signal".

Accordingly, a distinction seems to be made between a measured physiological parameter on the one hand and a calculated score on the other. This understanding is confirmed, for instance, in the penultimate paragraph of page 81.

In lines 10 and 11 of page 67 reference is made to "a score as measured or calculated". This might suggest that the score may also be "measured" in one way or another, but there is no disclosure of how this is done, let alone with respect to the "electronic signal".

It follows that no basis can be found in the application as originally filed for "calculating a calculated score based on the electronic

signal"[emphasis added]. Accordingly, claim 1 of the main request infringes Article 123(2) EPC.

2.2 Third to sixth auxiliary requests

The characterising portion of claim 1 of the third auxiliary request comprises the feature that the processor "is capable of issuing an exception notifying a remote caregiver (4910) that the patient requires attention when the electronic signal either exceeds or falls beneath a predetermined threshold."

The only passages cited by the appellant to support this amendment are lines 7 to 8 of page 67 and the description relating to Figure 39B (with respect to the threshold being specified as "predetermined").

Whereas the Board is satisfied with the basis indicated for the term "predetermined", it notes that the above-mentioned passage reads: "An alert may be generated when the score exceeds a threshold (or falls beneath a threshold), ...". Accordingly, reference is made to the score, i.e. a calculated variable, which does not correspond to the electronic signal generated by the physiological parameter transducing device, as explained above. It follows that the passage cited by the appellant does not provide a basis for the amended feature. Nor can the Board find any support for it elsewhere in the application. Accordingly, there is no basis in the application as originally filed for a processor "capable of issuing an exception notifying a remote caregiver (4910) that the patient requires attention when the electronic signal either exceeds or falls beneath a predetermined threshold" [emphasis added].

The above-mentioned amended feature is also present in claim 1 of the fifth auxiliary request, albeit omitting the word "either".

This is also the case for claim 1 of the fourth auxiliary request, which additionally omits the word "predetermined".

In claim 1 of the sixth auxiliary request, the second condition of the electronic signal falling beneath the predetermined threshold has been left out. With regard to the remaining feature that the processor "is capable of issuing an exception notifying a remote caregiver (4910) that the patient requires attention when the electronic signal either exceeds a predetermined threshold", no direct and unambiguous disclosure can be found in the application as originally filed, in particular not in the passage at page 56, line 25 to page 63, line 6 cited by the appellant.

Accordingly, claim 1 of the third to sixth requests infringes Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Hampe

E. Dufrasne

Decision electronically authenticated