

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INFOBIONIC, INC.,
Petitioner,

v.

BRAEMAR MANUFACTURING, LLC,
Patent Owner.

Case IPR2017-00796
Patent RE43,767 E

Before PHILLIP J. KAUFFMAN, KEVIN W. CHERRY, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

InfoBionic, Inc. (“Petitioner”), filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of all claims, namely, claims 1–9 and 11–26 of U.S. Patent No. RE43,767 E (Ex. 1001, “the ’767 patent”). Pet. 1, 3; *see also* Ex. 1001, 8:31–33 (indicating that claim 10 has been cancelled). Braemar Manufacturing, LLC (“Patent Owner”), filed a Preliminary Response (Paper 10, “Prelim. Resp.”) to the Petition. We instituted an *inter partes* review of claims 1–9 and 11–26 of the ’767 patent as unpatentable under § 103. Paper 11, 2 (“Decision to Institute” or “Dec.”); *see also* Paper 34, 2 (issuing order to institute on all grounds).

After institution of trial, Patent Owner filed a Response (Paper 14, “PO Resp.”), to which Petitioner replied (Paper 18, “Pet. Reply”). With our authorization, Patent Owner also filed a Sur-Reply (Paper 24, “PO Sur-Reply”) to address arguments made by Petitioner in its Reply, and Petitioner filed a Sur-Sur-Reply (Paper 28, “Pet. Sur-Sur-Reply”) in response to Patent Owner’s Sur-Reply.

Oral argument was conducted on May 1, 2018, and a transcript of the hearing is entered in the record. Paper 36 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 318(a). After considering the evidence and arguments of both parties, and for the reasons set forth below, we determine that Petitioner met its burden of showing, by a preponderance of the evidence, that claims 1–9 and 11–26 of the ’767 patent are unpatentable.

II. BACKGROUND

A. The '767 patent (Ex. 1001)

The '767 patent is a reissue of U.S. Patent No. 6,694,177, and is titled CONTROL OF DATA TRANSMISSION BETWEEN A REMOTE MONITORING UNIT AND A CENTRAL UNIT. Ex. 1001, (54), (64).

The '767 patent describes a method for remotely monitoring a patient's physiological condition. *See id.* at 1:12–15, 56–57; 2:1–3. In particular, the '767 patent purports to improve the efficiency of communication between a remote monitoring unit and a central monitoring unit (*see id.* at 1:66–2:37) and improve upon prior art systems that continuously monitor physiological characteristics of the patient (*id.* at 1:18–48). In doing so, the '767 patent seeks to conserve battery power, reduce cellular data transfer and its associated charges, and reduce inefficient usage of medical personnel. *Id.*

To illustrate the '767 patent's monitoring apparatus, we reproduce Figure 2, below:

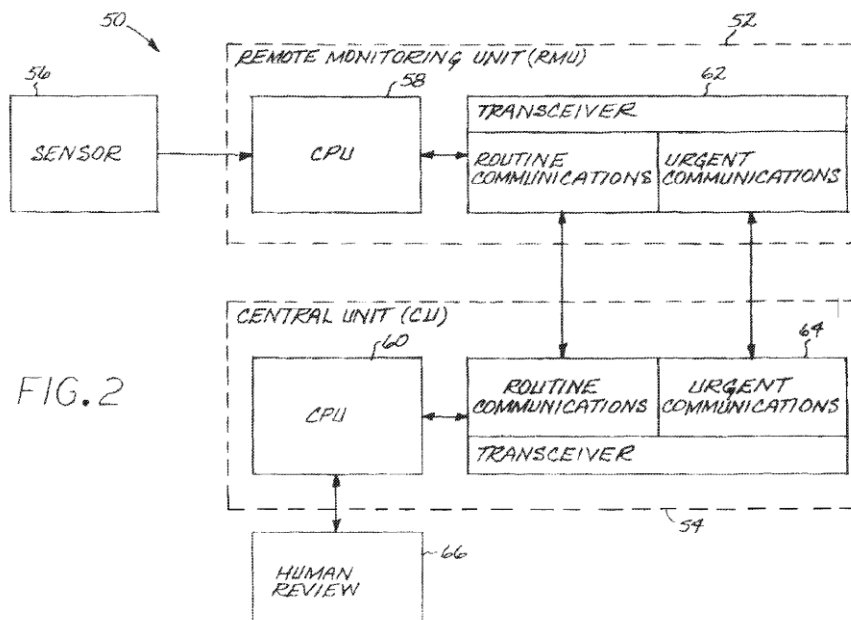


Figure 2 is a simplified schematic block diagram depicting monitoring apparatus 50 with remote monitoring unit (“RMU”) 52 (which is carried by a patient), central unit (“CU”) 54, and sensor 56. Ex. 1001, 3:33–35, 48–56. Sensor 56 communicates with RMU 52 (*id.* at 4:1–3) and measures a physiological characteristic of a patient (*id.* at 3:55–56), such as heart rate, blood pressure, and respiration (*see id.* at 3:60–62). RMU 52 has central processing unit (“CPU”) 58 and transceiver 62, while CU 54 has CPU 60 and transceiver 64. *Id.* at 4:1–17. CU 54 may also be provided with an interface for human (e.g., physician) review 66 of the action recommended by the CU’s CPU 60. *Id.* at 4:38–41. RMU 52 and CU 54 are placed in two-way communication with each other through transceivers 62, 64. *Id.* at 4:13–17.

As mentioned above, the ’767 patent purports to improve upon prior art systems and methods by reducing unnecessary data transfers. *See id.* at 2:20–26. We reproduce Figure 1 of the ’767 patent, below

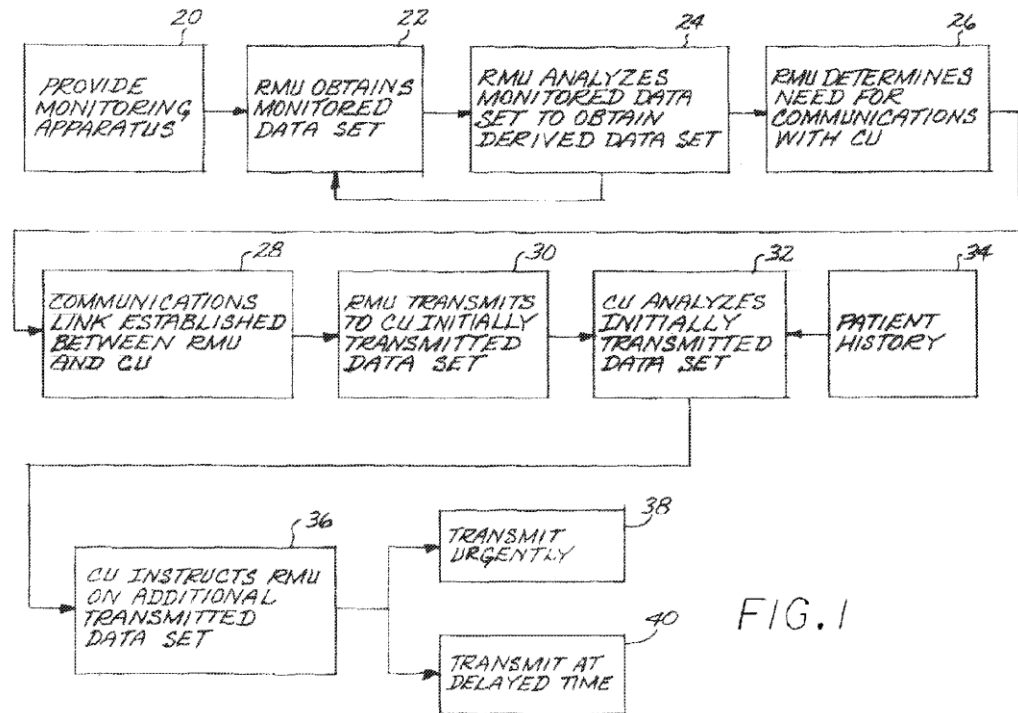


Figure 1 is a block flow diagram that describes the “method for practicing the present invention.” *Id.* at 3:31–32. At step 22, RMU 52 uses sensor 56 to monitor a patient’s physiological data, the “monitored data set.” *Id.* at 4:42–47. At step 24, RMU 52 then analyzes the monitored data set to obtain a “derived data set,” which is typically smaller than the monitored data set. *Id.* at 4:48–65. At steps 26, 28, and 30, if RMU 52 (via CPU 58) determines that the derived data set indicates a possible emergency (e.g., the patient’s heart rate exceeds a limit), RMU 52 transmits “initially transmitted data set” to CU 54 *immediately*. *Id.* at 4:65–5:25. This initially transmitted data set may be the same or different from the derived data set. *Id.* at 5:29–30. At step 32, CU 54 then analyzes this initially transmitted data set to determine if more information is needed, and whether that information is needed immediately or not. *See id.* at 5:39–6:14. If more information is needed urgently, at steps 36, 38, CU 54 instructs RMU 52 to provide an

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