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**Datasheet for the decision
of 7 July 2009**

Case Number: T 0322/06 - 3.5.05

Application Number: 01955027.6

Publication Number: 1340185

IPC: G06F 19/00

Language of the proceedings: EN

Title of invention:

Processing program data for medical pumps

Applicant:

Deltec, Inc.

Opponent:

-

Headword:

Processing program data/DELTEC

Relevant legal provisions:

EPC Art. 52(1), 56
RPBA Art. 13(3), 15(6)

Keyword:

"Inventive step (no) - main request and first to fifth
auxiliary requests"
"Admissibility of request filed in oral proceedings (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0322/06 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 7 July 2009

Appellant:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 12 September 2005
refusing European application No. 01955027.6
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: D. H. Rees
Members: P. Corcoran
F. Blumer

Summary of Facts and Submissions

- I. This is an appeal against the decision of the examining division dispatched on 12 September 2005, refusing the European patent application No. 01955027.6 (publication number EP 1340185) which was originally filed as international application No. PCT/US2001/24052, (publication number WO 2002/11049 A).
- II. The following documents were cited during the examination proceedings:
- D1: WO 99/32031 A;
D2: WO 00/03344 A.
- III. The decision under appeal was based on a set of claims 1-25 filed with the letter of 28 February 2003. The examining division found that the subject-matter of claims 1, 6, 7, 10, 16 and 20 lacked novelty over D1. The examining division further stated as an *obiter dictum* that it was of the opinion that even if the independent claims were amended to distinguish them from D1, a combination of D1 and D2 would be prejudicial to the inventive step of the claimed subject-matter.
- IV. With the statement setting out the grounds of appeal, the appellant (applicant) submitted a new set of claims 1-18 and also filed amendments to the description comprising new pages 3 and 3a. A precautionary request for oral proceedings was made.
- V. In a communication accompanying a summons to oral proceedings to be held on 7 July 2009 the board gave its preliminary opinion that the appeal was not

allowable. In particular, the board raised a number of minor objections under Article 84 EPC and expressed its preliminary opinion that the subject matter of the independent claims lacked novelty or at least an inventive step. The disclosures of D2 and D1 were considered to be of particular relevance in this regard.

In said communication, the board made reference to a number of additional documents which it considered potentially relevant to the proceedings, including the following document which is referred to in the present decision:

D3: G. McDaniel: IBM Dictionary of Computing,
10th Edition, pp. 56-59 & 164-167,
ISBN 0-07-031488-8, McGraw-Hill Inc., 1994.

VI. With a letter of reply dated 8 June 2009, received at the EPO on the same date, the appellant maintained the claims on file as a main request and filed six new auxiliary requests.

VII. At the oral proceedings the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of one of the following requests:

Claims 1-18 of the main request as filed with the statement of grounds;

Claims 1-18 of any of the first to fifth auxiliary requests as filed with the letter dated 8 June 2009;

Claims 6 of the sixth auxiliary request as filed during oral proceedings.

The sixth auxiliary request submitted during oral proceedings comprised a single independent claim, claim 6, which was an amended version of claim 6 of the second auxiliary request. The appellant proposed to file a full set of claims if, subsequent to a consideration of the issue of admissibility, the board expressed a positive opinion in respect of the submitted independent claim.

The further documents on which the appeal is based, i.e. the text of the description and the drawings, are as follows:

Description, pages:

1-2, 4-27 as published;

3, 3a as filed with the statement setting out the grounds of appeal.

Drawings, sheets:

1/11-11/11 as published.

VIII. Claim 1 of the main request reads as follows:

"A method for creating a library of pump data on a computer having a database, each pump program [*sic*], the pump data being organized into sets of program data, each set of program data being available for batch downloading to a medical pump and including data items for controlling operation of the medical pump, the method comprising:

entering a plurality of data items into a database on the computer, the plurality of data items forming a set of program data, at least some of the data items establishing parameters for controlling operation of a medical pump; and

assigning at least one data key to the set of program data, the data key identifying the set of program data."

Claim 6 of the main request reads as follows:

"An apparatus for maintaining a library of program data for medical pumps, the apparatus comprising:
memory loaded with a database,
the database including a plurality of program data records and a plurality of data key records, each program data record containing a set of program data items, at least some of the program data items included in the database for controlling operation of a medical pump, each data key record containing a data key and each data key identifying one of the data program records;
a database management system programmed to link a data key to a set of program data."

IX. Claim 1 of the first auxiliary request reads as follows:

"A method for creating a library of pump data on a computer having a database, each pump program [sic], the pump data being organized into sets of program data, each set of program data being available for batch downloading to a medical pump and including data items for controlling operation of the medical pump to infuse liquid into a patient,
the method comprising:
entering a plurality of data items into a database on the computer, the plurality of data items forming a set of program data, at least some of the data items establishing parameters for controlling operation of a medical pump to infuse liquid; and

assigning at least one data key to the set of program data, the data key identifying the set of program data and including a name meaningful to a caregiver."

Claim 6 of the first auxiliary request reads as follows:

"An apparatus for maintaining a library of program data for medical pumps to infuse liquid to a patient, the apparatus comprising:

memory loaded with a database, the database including a plurality of program data records and a plurality of data key records, each program data record containing a set of program data items, at least some of the program data items included in the database for controlling operation of a medical pump, each data key record containing a data key and each data key identifying one of the data program records and including a name meaningful to a caregiver;

a database management system linking a data key to a set of program data."

X. Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that the step of assigning at least one data key has been amended to read as follows:

"assigning at least one data key to the set of program data, the data key identifying the set of program data and including a name meaningful to a caregiver selected from a group comprising a patient name, drug name, and therapy name."

The definition of the corresponding feature of claim 6 of the second auxiliary request has likewise been amended to read as follows:

"each data key identifying one of the data program records and including a name meaningful to a caregiver selected from a group comprising a patient name, drug name, and therapy name."

Claim 1 of the third auxiliary request differs from the claim 1 of the first auxiliary request in that the step of assigning at least one data key has been amended to read as follows:

"assigning at least one data key to the set of program data, the data key identifying the type of data key and the set of program data with a name meaningful to a user and a unique identification."

The definition of the corresponding feature of claim 6 of the third auxiliary request has likewise been amended to read as follows:

"each data key identifying the type of data key and one of the data program records with a name meaningful to a user and a unique identification."

Claim 1 of the fourth auxiliary request differs from claim 1 of the first auxiliary request in that the step of assigning at least one data key has been amended to read as follows:

"assigning at least one data key to the set of program data, the data key identifying the set of program data and identifying a therapy."

The definition of the corresponding feature of claim 6 of the fourth auxiliary request has likewise been amended to read as follows:

"each data key record containing a data key and each data key identifying one of the data program records and identifying a therapy."

Claim 1 of the fifth auxiliary request differs from the claim 1 of the first auxiliary request in that the step of assigning at least one data key has been amended to read as follows:

"assigning at least one data key to the set of program data, the data key identifying the set of program data and including a field for data identifying the type of data key, a field for a name meaningful to a caregiver, and a field for a unique identification."

The definition of the corresponding feature of claim 6 of the fifth auxiliary request has likewise been amended to read as follows:

"each data key identifying one of the data program records and including a field for data identifying the type of data key, a field for a name meaningful to a caregiver, and a field for a unique identification."

XI. Claim 6 of the sixth auxiliary request reads as follows:

"A system for maintaining a library of program data for medical pumps to infuse liquid to a patient, the system comprising:

a medical pump;

memory loaded with a database, the database including a plurality of program data records and a

plurality of data key records, each program data record containing a set of program data items, at least some of the program data items included in the database for controlling operation of the medical pump, each data key record containing a data key and each data key identifying one of the data program records and including a name meaningful to a caregiver selected from a group comprising a patient name, drug name, and therapy name;

a database management system linking a data key to a set of program data,

wherein said medical pump is configured and adapted to upload a program data item for controlling operation of the medical pump to said database."

XII. At the end of the oral proceedings the chairman announced the board's decision.

Reasons for the Decision

Preliminary observations

- 1.1 Claim 1 of the main request is directed towards a method for creating a library of pump data on a computer having a database. As noted in point 3.1 of the annex accompanying the summons to oral proceedings, the expression "each pump program" on the second line of the claim bears no identifiable syntactic relationship to the rest of the claim and hence its technical significance, if any, is unclear. This expression is likewise found in claim 1 of the first to fifth auxiliary requests.
- 1.2 During oral proceedings the appellant's representative indicated that he would be prepared to amend claim 1 of the main request by deleting the aforementioned expression "each pump program".
- 1.3 The inclusion of said expression in the wording of claim 1 of the main request and the corresponding claim of the first to fifth auxiliary requests is evidently due to an oversight. This expression will therefore be ignored for the purposes of interpreting claim 1 of said requests.

Main request

2. *Inventive step - claim 6*

- 2.1 Claim 6 of the main request is directed towards an apparatus for maintaining a library of program data for medical pumps. According to the disclosure, the claimed

apparatus may be a general purpose computer (cf. p.4 1.24-28, published application), provided with conventional database management system (DBMS) software (cf. p.16 1.9-27) which is used for maintaining a database of records. The records in the database contain data for controlling the operation of medical pumps.

The wording used to define the final feature of the claim, viz. "a database management system programmed to link a data key to a set of program data", is somewhat unclear in the overall context of the claim as there is no antecedent mention of "a set of program data" but rather "a set of program data items" (emphasis added). The final claim feature is therefore construed as specifying that the database management system is used to link a database key with "a set of program data items", i.e. a database record. This construction of the aforementioned wording is consistent with the disclosure (cf. p.17 1.5-8).

- 2.2 D2 discloses general purpose computers in the form of a "pharmacy CPU 60" and a "bedside CPU 80" (cf. D2: Fig. 1; p.8 1.2-5) These computers form part of a networked data processing system and D2 discloses that the computers may be provided with a database in their memory (see for example, D2: p.13 1.8-19, in particular 1.17-19). The disclosed computers are evidently suitable for maintaining a library of program data for medical pumps. On this basis D2 discloses implicitly "an apparatus for maintaining a library of program data for medical pumps comprising a memory loaded with a database" in the language of claim 6.

2.3 The board construes the term "data key" used in claim 6 as denoting a conventional database key which unambiguously identifies a record in a database (cf. D3: entry for "database key" on p.165). In the board's judgement, a database as referred to on p.13 l.17-19 of D2 implicitly comprises a plurality of data records and a plurality of data key records, each data record containing a set of data items and each data key record containing a data key and each data key identifying one of the data records. The appellant did not dispute that databases conventionally have such a structure.

On this basis, the board concludes that the reference to a database on p.13 l.17-19 of D2 entails an implicit disclosure of a database management system programmed to link a data key to a set of data as recited in the final feature of claim 6 because the presence of a database implies the provision of database management system (DBMS) software providing the functionality recited in the claim (see, for example, p.13 l.17-18 of D2 where it is stated that data may be automatically entered into a database using appropriate software programs).

2.4 In D2 it is further separately disclosed that configuration parameters can be automatically downloaded to configure an infusion pump, which is a "medical pump" within the meaning of claim 6 (cf. D2: p.23 l.27 - p.24 l.8). The configuration parameters are downloaded from a computer, i.e. from the pharmacy CPU into the bedside CPU and then into the infusion pump 92 (cf. p.23 l.27 - p.24 l.3). Hence, in the language of claim 6, D2 discloses downloading a set of "program data items", i.e. configuration parameters, for controlling the operation of a medical pump.

D2 does not disclose that the configuration parameters for controlling the operation of a medical pump are stored in and downloaded from the particular database which it also discloses.

2.5 The subject-matter of claim 6 thus differs from D2 in that the claim specifies that the database records are "program data records" which comprise a set of "program data items" at least some which are for controlling operation of a medical pump.

2.6 A computerised database is a persistent data storage means which facilitates the automation of data management tasks (e.g. storage, maintenance, retrieval of related sets of data items). In the present case, the storage of sets of configuration parameters in a database is intended to support the automatic configuration of medical pumps (cf. application: p.1 1.23 - p.2 1.2 and p.19 1.21-24).

The technical effect provided by the aforementioned difference over D2 is the automated, i.e. computerised, management of sets of configuration parameters ("program data items") for medical pumps.

The objective technical problem vis-à-vis D2 may thus be formulated as how to automate the data management tasks associated with sets of configuration parameters for a plurality of medical pumps.

The medical pump 92 of D2 is one of a plurality of infusion pumps connected to the beside CPU 80 of the care

management system (cf. D2: p.23 l.27 - p.24 l.3; Fig. 2). In the given context, providing means for automating the data management tasks associated with the parameters to be used for configuring these pumps represents an obvious desideratum. On this basis the board judges that the above-formulated objective technical problem is not remote and could have been posed by the skilled person without the exercise of inventive skill. The solution to this problem is likewise found to be obvious for the reasons which follow.

- 2.7 D2 does not disclose that the downloaded configuration parameters are stored in the manner specified in claim 6. However, the claimed storage format corresponds to that of a conventional computerised database system such as referred to on p.16 l.20-27 of the application. Such database systems are generally used whenever a requirement arises to automate data management tasks. In the board's judgement, the use of a database system for the purpose of automating the management of sets of configuration parameters for the infusion pumps of D2 represents an obvious application of a generally known data storage arrangement which would lead the skilled person faced with the technical problem formulated in 2.6 above to the subject-matter of claim 6 without the exercise of inventive skill, the more so since the system of D2 already employs at least one database as discussed above.

3. *Observations re. appellant's submissions*

- 3.1 The appellant has submitted that D2 is silent about where the pump configuration parameters are stored and has

argued that the lack of a disclosure in this respect suggests that the configuration parameters are entered manually into the pharmacy CPU of D2 for downloading each time a pump has to be programmed (cf. letter of June 8 2009, in particular, §6, § 15 and § 21). The appellant's submissions are understood to imply that the pump configuration parameters are obtained by manual data extraction from an order form completed by a doctor (cf. letter of June 8 2009, § 13).

3.2 Although D2 provides no apparent disclosure about where the pump configuration parameters are stored, the board is not convinced that this implies that such parameters are extracted from an order form completed by a doctor. An order form completed by a doctor is more likely to contain abstract medical instructions relating to patient treatment and medication rather than the technical parameters for pump configuration.

3.3 In any case, even if D2 is interpreted as proposed by the appellant, i.e. as requiring configuration parameters to be entered manually into the pharmacy CPU for downloading each time a pump has to be programmed, this would not, in the board's judgement, lead to the conclusion that the subject-matter of claim 6 involves an inventive step.

The skilled person could be expected to recognise without the exercise of inventive skill the shortcomings of an arrangement requiring manual entry of a set of pump configuration parameters at a computer terminal each time a pump has to be programmed, particularly in view of the fact that D2 recognises that the manual entry of the parameters necessary to configure a pump is a potential

source of inaccuracy (cf. D2: p.24 l.4-7). This passage apparently refers to manual entry of the configuration parameters at the pump, but the skilled person can be expected to recognise without the exercise of inventive skill that essentially the same considerations apply to manual entry of configuration parameters at a computer terminal.

- 3.4 Based on the interpretation of D2 proposed by the appellant, the objective technical problem vis-à-vis said document can be formulated as how to avoid manual entry of sets of parameters at the computer terminal each time a pump has to be programmed or, alternatively, how to improve the degree of automation of the pump configuration procedure.
- 3.5 The manual entry of a set of parameters at the computer terminal implies that the parameters must be stored at least temporarily in the computer's memory prior to downloading to the pump. The skilled person can be expected to recognise on the basis of his general knowledge and routine design skills that the solution to technical problem as formulated in 3.4 above lies in the provision of appropriate means for the persistent storage of sets of configuration parameters such that, having been entered once at the terminal, they can be retrieved for downloading whenever subsequently required. For the skilled person faced with the aforementioned technical problem the use of a conventional computerised database system for the persistent storage of sets of pump configuration parameters represents an obvious application of a generally known data storage arrangement.

3.6 In view of the foregoing, the board concludes that even when starting from the interpretation of D2 proposed by the appellant, the subject-matter of claim 6 does not involve an inventive step.

4. *Inventive step - claim 1*

4.1 Claim 1 of the main request is directed towards "a method for creating a library of pump data on a computer having a database". The term "set of program data" as used in the claim is construed as denoting a conventional database record (cf. p.17 l.5-8 of the application), which is used to store pump configuration parameters. The claim steps relating to entry of a plurality of data items into a database on the computer and assigning at least one data key to the set of program data are construed as defining standard steps for creating a database on a general purpose computer using conventional DBMS software such as referred to on p.16 l.20-27 of the application.

4.2 The term "batch downloading" as used in claim 1 is construed as denoting a generally known method of data exchange between two devices which involves little or no user interaction (cf. D3: entries for "batch", p.57 and "batched communication", p.58). Any data record in a database is inherently "available for batch downloading" to an external device as recited in claim 1.

In the board's judgement, "batch downloading" of pump configuration data is also disclosed implicitly in D2 which states that the configuration parameters are automatically downloaded to an infusion pump thereby

implying an absence of user interaction during the downloading (cf. D2: p.23 l.27 - p.24 l.3).

- 4.3 Having regard to the finding that the use of a computerised database for the storage of pump configuration parameters does not require the exercise of inventive skill in the given context (cf. observations under 2. and 3. above), the board likewise concludes that the method for creating a database according to claim 1 does not involve an inventive step.
5. In view of the foregoing, the board finds that claims 1 and 6 of the main request lack inventive step over D2. The main request is therefore not allowable.

First to fifth auxiliary requests

6. *Preliminary observations re. amendments*

- 6.1 Claim 6 of the first auxiliary request and the corresponding claim of the second to fifth auxiliary requests differs from claim 6 of the main request in that the specification of "data items for controlling operation of the medical pump" has been amended by appending the limitation "to infuse liquid into a patient". Additionally, the specification of "data items establishing parameters for controlling operation of a medical pump" has been amended by appending the limitation "to infuse liquid".

In respect of these limitations, the board notes that an infusion pump such as disclosed in D2 (cf. p.23 l.27 -

p.24 1.12), is intrinsically a device for delivering medication by "infusing liquid into a patient".

The configuration parameters disclosed on p.23 1.27 - p.24 1.12 of D2 are thus implicitly, in the language of claim 6, "data items for controlling operation of the medical pump to infuse liquid into a patient". Hence, the aforementioned limitations do not result in any distinction over the disclosure of D2.

6.2 Claim 6 of the first auxiliary request and the corresponding claim of the second to fifth auxiliary requests further differs from claim 6 of the main request in respect of the definition of the data key feature. None of the definitions of the data key feature according to claim 6 of any of said auxiliary requests overcome the inventive step objections raised against the main request for the reasons given below.

7. *Inventive step - claim 6*

7.1 The appellant refers to the embodiment disclosed on p.16 1.32 - p.17 1.4 and p.19 1.33 - p.20 1.13 of the application as providing support for the auxiliary requests in respect of the amendments to the data key feature (cf. appellant's submissions re. support for claim amendments as annexed to the letter of 8 June 2009). According to this embodiment, each data key comprises three fields, a first field identifying a type of data key (e.g. therapy name, drug name or patient name), a second field containing the actual name of the data key that is meaningful to a user (e.g. the patient's name)

and a third field which is a unique identification formed from a string of characters.

7.2 The form of the key disclosed in the above-cited passages of the disclosure is presented in the application as filed as a mere design choice having no apparent technical significance beyond providing the conventional function associated with a database key, i.e. enabling selective access to an associated database record.

7.3 The board notes, in particular, that an intrinsic aspect of a conventional database key (i.e. "data key" in the language of the present claims, cf. 2.3 above) is its ability to unambiguously identify a record in a database (cf. D3: entry for "database key" on p.165). As such, any database key is arranged to identify a database record by means of a "unique identification". Otherwise the key could not perform its intended function.

Specifications to the effect that a data key identifies a database record (cf. claim 6 of the first, second and fourth auxiliary request), or identifies a database record with a unique identification (cf. claim 6 of the third auxiliary request), or includes a field for a unique identification (cf. claim 6 of the fifth auxiliary request), are thus found to define a known, intrinsic characteristic of any database key.

7.4 The specification relating to the inclusion of "a name meaningful to a caregiver" as recited in claim 6 of the first auxiliary request relates to the key's cognitive information content. It would not appear to make any

technical difference to the system whether or not the name of the data key is "meaningful to a caregiver".

The further specification that the name is selected from a group comprising a patient name, drug name and therapy name as recited in claim 6 of the second auxiliary request merely enumerates a set of logical categories which are intended to have particular cognitive associations in the mind of the caregiver.

Thus, the aforementioned specifications in claim 6 of the first and second auxiliary requests merely define elements of the data key's cognitive information content and have no technical effect. In the given context, incorporating data characterised in terms of its cognitive information content into a database key does not, in the board's judgement, involve any non-obvious technical considerations nor does it give rise to any technical effects which might be invoked in support of an inventive step. Hence, these amendments which relate to limitations of an inherently non-technical nature, fail to provide a technical contribution to the art which would overcome the inventive step objection against claim 6 of the main request.

- 7.5 Similar considerations are found to apply in the case of the specification of a "type" assigned to the key and "a name meaningful to a user" as recited in claim 6 of the third auxiliary request, to the specification to the effect that the data key identifies a therapy as recited in claim 6 of the fourth auxiliary request and to the specifications of a field for data identifying the type of data key and a field for a name meaningful to a

caregiver as recited in claim 6 of the fifth auxiliary request.

- 7.6 In view of the foregoing, the board finds that the definition of the data key feature of claim 6 of the first auxiliary request fails to overcome the inventive step objection against the corresponding claim of the main request. The same finding is made in respect of claim 6 of each of the second, third, fourth and fifth auxiliary requests.
8. The amendments to claim 1 of each of the first to fifth auxiliary requests correspond to the amendments to claim 6 of the respective request. Accordingly, the findings under 7.6 above apply *mutatis mutandis* to claim 1 of each of said requests.
9. In view of the foregoing, the board finds that the subject-matter of claims 1 and 6 of the first to fifth auxiliary requests does not involve an inventive step. The first to fifth auxiliary requests are therefore not allowable.

Sixth auxiliary request

10. *Admissibility*

- 10.1 As noted in point VII of the Facts, the sixth auxiliary request comprises a single independent claim, claim 6. The appellant proposed to file a complete set of claims if, subsequent to a consideration of the issue of

admissibility, the board expressed a positive opinion in respect of this independent claim.

10.2 Claim 6 of the present request is based on claim 6 of the second auxiliary request with a number of amendments. In particular, the following wording has been appended to the claim:

" wherein said medical pump is configured and adapted to upload a program data item for controlling operation of the medical pump to said database."

According to the appellant, the appended wording incorporates subject-matter from dependent claim 5 of the second auxiliary request which reads as follows:

"The method of one of claims 1 to 4, wherein the computer is in data communication with a medical pump, the method further comprising uploading a set of data items from the pump".

The appellant submitted that the aforementioned amendment was supported by dependent claim 5 of the application as filed and also by p.19 1.21-32 of the disclosure.

10.3 The board notes that despite the essentially identical wording used to define the features of dependent claim 5 of the second auxiliary request and dependent claim 5 of the application as filed, the dependencies of these claims are different. Dependent claim 5 of the application as filed additionally comprises the features of claims 1, 2 and 3 of the original claim set whereas dependent claim 5 of the second auxiliary request additionally comprises the features of claim 1 and any of claims 2 to 4 of that request. Hence, dependent claim 5

of the second auxiliary request and dependent claim 5 of the application as filed define different combinations of features.

- 10.4 The board further notes that there are significant differences between the wording of the amendment to claim 6 of the present request and the wording of dependent claim 5 as filed.

The wording of said claim 6, according to which the pump is configured and adapted to upload a program data item, implies that the pump steers or at least initiates the uploading of the program data item. The wording of the original dependent claim 5, according to which a set of program data items is uploaded from the pump implies that the uploading is steered or at least initiated by the computer, i.e. it is the computer which is configured and adapted to upload a set of data items from the pump.

Furthermore, said claim 6 specifies the uploading of "a program data item for controlling operation of the medical pump" whereas the original dependent claim 5 specifies the uploading of "a set of program data items". Said claim 6 further specifies that the pump is configured to upload the program data item to the database whereas the original dependent claim 5 recites that the set of program data items is uploaded from the pump without specifying the destination to which it is uploaded.

- 10.5 In view of the differing dependencies of original dependent claim 5 and its counterpart in the second auxiliary request (cf. 10.3 above), and likewise, in view

of the differences between the wording of the amendment to claim 6 of the present request and the wording of dependent claim 5 as filed (cf. 10.4 above), it is questionable as to whether the original claims suffice as a basis for the amendment to claim 6 of the present request.

Moreover, the passage on p.19 1.21-32 of the disclosure cited by the appellant discloses that a caregiver may upload data from a pump (cf. p.19 1.24-27). The board interprets this as denoting that the computer is configured to allow a user to upload data from the pump. The cited passage of the application does not disclose that the pump is configured and adapted to upload a program data item to the database as recited in the amendment under consideration.

In view of these considerations, the board finds that the appellant's submissions during oral proceedings were insufficient to establish to its satisfaction that application as filed provides a sufficient basis for the amendment to claim 6 of the present request.

10.6 None of the independent claims hitherto on file included features relating to the uploading of data from the pump. Thus, apart from the unresolved issue of compliance with the requirements of Article 123(2) EPC, the present claim 6 involves a substantial change in the nature of the claimed invention.

It is noted in this regard that the amendment to claim 6 of the present request involves more than the mere incorporation of subject-matter from a previously filed

dependent claim into an independent claim. The differences in wording between said amendment to said claim 6 and the previously filed dependent claims on which the amendment is allegedly based, are such as to result in the introduction of new subject matter vis-à-vis the dependent claims on file (cf. observations under 10.4 above).

- 10.7 The uploading of a set of data items from an infusion pump appears to be known *per se* from D2 where it is disclosed that data is retrieved in real-time from the medical devices attached to the computer system and the operation of the infusion pump is monitored automatically (cf. D2: p.16 l.22 - p.17 l.17, p.24 l.13-28). Thus, *prima facie*, it is not apparent on what basis the uploading of data items from the medical pump should be considered to involve an inventive step over D2.

Moreover, the potential relevance, if any, to the issue of inventive step of the differences in wording with respect to the original dependent claim 5 (cf. observations under 10.4 above), is not immediately evident.

During oral proceedings, the appellant did not make any submissions which would have enabled the board to clarify these issues to its satisfaction.

- 10.8 An examination of the question as to whether the amendment to the present claim 6 could be considered to overcome the inventive step objections maintained against the preceding requests would thus require investigation

and clarification of issues which were in effect raised for the first time during oral proceedings.

If the request was intended as a response to the board's preliminary opinion in preparation for the oral proceedings, then it should have been submitted prior to the time limit specified in that opinion, i.e. at the latest one month before the oral proceedings, rather than at such a late stage in the procedure.

10.9 The board thus concluded that, in addition to being late-filed and incomplete, the sixth auxiliary request did not clearly overcome the objections raised against the preceding requests. Moreover, the amendments introduced with said request raised new issues which, in the board's judgement, could not be satisfactorily resolved in the oral proceedings.

10.10 In view of the foregoing, the board judged that the sixth auxiliary request could not be dealt with in a satisfactory manner without adjournment of the oral proceedings (cf. Article 13(3) RPBA). Admission of the request would thus prevent the case being ready for decision at the conclusion of the oral proceedings (cf. Article 15(6) RPBA). For these reasons the board exercised its discretion not to admit the request into the proceedings.

11. *Conclusion*

11.1 The main request and the first to fifth auxiliary requests are not allowable for the reasons given above.

11.2 The sixth auxiliary request is rejected as inadmissible.

11.3 In the absence of an allowable request the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

K. Götz

D. H. Rees