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**Datasheet for the decision  
of 10 September 2009**

**Case Number:** T 1601/06 - 3.5.05

**Application Number:** 99937221.2

**Publication Number:** 1097429

**IPC:** G06F 19/00

**Language of the proceedings:** EN

**Title of invention:**

System and method for collecting data and managing patient care

**Applicant:**

Cardinal Health 303, Inc.

**Opponent:**

-

**Headword:**

Patient identification using transponder/CARDINAL HEALTH 303

**Relevant legal provisions:**

EPC Art. 52, 54,  
RPBA Art. 15(3)

**Relevant legal provisions (EPC 1973):**

EPC Art. 56, 106, 107, 108  
EPC R. 67

**Keyword:**

"Inventive step - no; Refund of the appeal fee - no"

**Decisions cited:**

J 0010/07

**Catchword:**

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Case Number: T 1601/06 - 3.5.05

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.05  
of 10 September 2009

**Appellant:** Cardinal Health 303, Inc.  
10221 Waterbridge Circle, Building A  
San Diego, CA 92121 (US)

**Representative:** Hill, Justin John  
McDermott Will & Emery UK LLP  
7 Bishopsgate  
London EC2N 3AR (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 30 May 2006  
refusing European application No. 99937221.2  
pursuant to Article 97(1) EPC 1973.

**Composition of the Board:**

**Chairman:** D. H. Rees  
**Members:** A. Ritzka  
P. Schmitz

## Summary of Facts and Submissions

I. This appeal is against the decision of the examining division dispatched 30 May 2006, refusing European Patent Application No. 99 937 221.2 for the reasons that independent claim 1 of the main and auxiliary request did not involve an inventive step having regard to the disclosure of

D1: WO 96/36923 A and

D2: WO 95/23378 A

and the common general knowledge as disclosed by e.g.

D7: Signal processing, Elsevier science Publishers B. V. Amsterdam, NL; Vol. 26 No. 3, 01 March 1992, H. J. Butterweck et al, pages 369 - 379: "A Remote Identification System Based on Passive Identifier" or

D9: WO 96/22049 A.

II. Notice of appeal and the statement setting out the grounds of appeal were received on 4 August 2006. The appeal fee was paid on the same day. The appellant requested that the decision be set aside and that a patent be granted based on the main request or the auxiliary request filed with the statement setting out the grounds of appeal. Further, reimbursement of the appeal fee was requested and an auxiliary request for oral proceedings was made.

The request for reimbursement of the appeal fee was based on the reason that the applicant was not given

any opportunity to present comments on the final grounds for the decision.

III. On 28 April 2009 the board issued a summons to oral proceedings scheduled to take place on 10 September 2009 accompanied by a communication. In the communication the board referred to documents D1, D2, D7, D9 and

D3: US 4 688 026 A.

The board took the preliminary view that claim 1 of the main and auxiliary request did not appear to involve an inventive step having regard to the disclosure of D1, D2 and either of D7 or D9, or, in the alternative, having regard to the disclosure of D1 and D3.

IV. With its letter of 9 July 2009 the appellant requested that the oral proceedings be conducted by video conference.

V. The board informed the appellant that on 10 September 2009, for which oral proceedings was scheduled, no video conferencing room was available to the board and that, therefore, oral proceedings would be held as a normal hearing.

VI. With letter of 12 August 2009 the appellant's representative announced that his client would not be attending oral proceedings. Written communication of the decision was requested.

VII. Oral proceedings took place as scheduled on 10 September 2009. Nobody attended on behalf of the

appellant. After deliberation on the basis of the submissions and requests received on 4 August 2006 the board announced its decision.

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

"A system for programming a clinical device (210) to deliver medication to a patient (245) within a medical institution, the system comprising a terminal (235) operatively connected to the clinical device (210), a processor having a memory in which is stored identification data, clinical device data and patient treatment data, the patient treatment data including medication identification data and clinical device operation parameters associated with the medication identification data for programming the clinical device to deliver the medication to the patient, means for detecting (230) the identity of a patient, input means operatively connected to the processor for input of identification data, patient data, clinical device data and patient treatment data, the processor being configured to store said data in memory, communication means adapted to operatively connect the terminal and the detecting means to the processor and for communicating identification data from the detecting means (230) to the processor, the processor being adapted to compare the communicated data to the stored identification data, the processor also being adapted to download the clinical device operating parameters associated with the patient treatment data to the terminal (235) and to program and operate the clinical device (210) in accordance with the downloaded operating parameters in response to a positive result of the comparison of the identification data by the

processor, characterized in that the means for detecting (230) is a transponder located in the patient room or treatment area, the transponder being configured to transmit a signal that interacts with a passive identification device (240) worn by a patient (245), the transponder (230) being adapted, to sense the interaction and send a signal to the processor representing selected information about the patient, without any particular action on the part of the patient or caregiver."

Claim 1 of the auxiliary request differs from claim 1 of the main request in that "the processor being configured to store" is replaced by "the processor comprising means adapted to store", "the transponder being configured to" is replaced by "and "configured to" and "particular" is replaced by "positive".

## **Reason for the Decision**

### 1. *Admissibility*

The appeal complies with the provisions of Articles 106 to 108 EPC 1973, which are applicable according to J 0010/07, point 1 (see Facts and Submissions point II above). Therefore it is admissible.

### 2. *Non-attendance of oral proceedings*

The appellant was duly summoned to the oral proceedings which was requested by the appellant, see Facts and Submissions points II and III above. 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.

Thus, the board was in a position to take a decision at the end of the hearing.

The appellant did not comment in substance on the objections presented in the communication accompanying the summons, neither did it present amendments to its case.

### 3. *Novelty and inventive step*

#### 3.1 Main request

As stated in the communication accompanying the summons and not disputed by the appellant, D1 corresponds to a US-application on which a continuation in part application corresponding to the present application is based. The description of D1 is essentially identical to the description of the present application, except for page 4, lines 22 to 28; page 7, lines 17 to 21 and page 27, line 1 to page 28, line 13, disclosing an embodiment of the detecting means comprising a transponder and a passive identification device.

As further stated in the communication accompanying the summons and not disputed by the appellant, the subject-matter of claim 1 differs from D1 in that the means for

detecting comprise a transponder located in a patient room or treatment area, the transponder being configured to transmit a signal that interacts with a passive identification device worn by a patient, the transponder being adapted to sense the interaction and send a signal to the processor representing selected information about the patient, without any particular action on the part of the patient or a caregiver. Thus, the subject-matter of claim 1 is novel (Article 54 EPC).

D1 is considered to be the most relevant prior art document.

Using a transponder and a passive identification device as means for detecting instead of a barcode reader and a barcode as disclosed in D1 represents a further implementation of means for detecting in which manual scanning of the barcode with the barcode reader is not needed. During manual scanning the barcode reader has to be placed in close proximity of the barcode.

Starting from D1, the problem underlying claim 1 is thus to provide a further implementation of means for detecting which avoids manual scanning.

D3, which is directed to methods for identifying persons or things wherein the persons or things are provided with identification tags (see column 1, lines 12 to 15), discloses that a disadvantage of barcodes used in identification tags is that the bar code tag must be placed in a position that is easily accessible to the bar code reader and the reader must come within close proximity of the tag in order to sense the code thereon, see column 1, lines 36 to 40. D3 mentions that



identification tags may be used to identify people (see column 1, lines 12 to 15), in particular in a health care facility, (see column 3, lines 10 to 18).

Thus, D3 deals with a similar problem in a similar context as the present application. The skilled person would therefore consult D3 for a solution of the problem.

D3 teaches the use of a passive device that powers itself from remotely generated RF energy in a method of identifying people or goods. The passive device is programmed with a code which can be read by a battery-powered portable unit which comprises an antenna and a reader/transmitter which generates RF signals to broadcast over the antenna and processes the signals received over the antenna, see column 4, lines 36 to 67. Moreover, D3 discloses that these devices can be used in a method of identifying people in a health care facility. A tag may be affixed to a wrist band on a patient. The tag is read using a portable unit without disturbing the patient. See column 8, lines 27 to 44. The method of identifying people in a health care facility is disclosed with reference to figure 1 which is said to be a perspective view of a building having a variety of tagged objects therein which can be read by a portable unit transported by the user as he walks through each of the various rooms, see column 3, lines 60 to 63.

The portable unit, which corresponds to a transponder, being transported by the user into a specific room, is, as a result, located in that specific room. It would therefore be obvious to replace the barcode tag and the

barcode reader in the system and method disclosed in D1 by a transponder located in a patient room or treatment area, the transponder being configured to transmit a signal that interacts with a passive identification device worn by a patient, the transponder being adapted to sense the interaction and send a signal to the processor representing selected information about the patient, without any particular action on the part of the patient or a caregiver.

Even if the portable unit being transported into the patient room were not considered to be located in the patient room or a treatment room in the sense intended by the appellant, the skilled person would understand that it is a simple matter of choice whether the portable unit is transported into or located more permanently in the room in which it is needed.

Thus, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC 1973). Therefore, the main request has to be refused (Article 52 EPC).

### 3.2 Auxiliary request

The differences between claim 1 of the auxiliary request and claim 1 of the main request (see Facts and Submissions point VIII) are considered to be linguistic rather than substantial. Therefore, the considerations presented with respect to the main request in point 3.1 above apply equally. The auxiliary request is refused accordingly.

### 3.3 There being no further requests, the appeal has to be dismissed.

4. *Reimbursement of the appeal fee*

According to Rule 67 EPC 1973 the appeal fee shall be reimbursed if the appeal is allowable and the reimbursement is equitable by reason of a substantial procedural violation.

As the appeal is not allowable (see point 3.3 above), the request for refund of the appeal fee must be refused.

**Order**

**For these reasons, it is decided that:**

The appeal is dismissed.

Registrar:

Chairman:

K. Götz

D. H. Rees