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Datasheet for the decision of 11 December 2009

Case Number: T 0421/07 - 3.4.01

Application Number: 02725450.7

Publication Number: 1374140

IPC: G06K 1/12

Language of the proceedings: EN

Title of invention:
Coding symbology and a method for printing same

Applicant:
Baxter International Inc.

Headword:
-

Relevant legal provisions:
EPC Art. 52(1)

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Inventive step (no)"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0421/07 - 3.4.01

D E C I S I O N
of the Technical Board of Appeal 3.4.01
of 11 December 2009

Appellant: Baxter International Inc.
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Representative: Dee, Ian Mark
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 3 January 2007 refusing European application No. 02725450.7 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: B. Schachenmann
Members: F. Neumann
G. Assi

Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division to refuse the European patent application number 02 725 450.7.

II. The appellant requested that the decision be set aside and a patent be granted on the basis of claims 1 to 30 filed with the grounds of appeal dated 27 April 2007.

Oral proceedings were requested as an auxiliary measure.

III. The appellant was summoned to oral proceedings and a communication setting out the preliminary opinion of the Board was issued. No substantive response was filed to the communication. With fax dated 10 December 2009, the appellant withdrew the request for oral proceedings and requested a decision on the file as it stands.

IV. During the appeal proceedings, the following citations were taken into account:

D1: WO 99/49408;
D2: US-A-5 493 107.

V. Independent claim 1 reads as follows:

"*A medical container having a coding symbology comprising:*
a transparent substrate (30) defining a portion of the container;
a plurality of light-reflecting segments (22) separated by spaces (24) and disposed on the substrate, the

spaces defining light-absorbing segments (26), wherein the light-reflecting segments and the light-absorbing segments define a negative image bar code (20) representing fixed information and variable information, and wherein the negative image bar code is detectable using a reader."

Independent claims 13 and 29 define a medical container system and a method of transferring a negative image bar code onto a medical container respectively. Claims 2 to 12, 14 to 28 and 30 are dependent claims.

VI. The arguments of the appellant, insofar as they are pertinent to the present decision, are set out below in the reasons for the decision.

Reasons for the Decision

1. Reference is made to the transitional provisions for the amended and new provisions of the EPC, from which it may be derived which Articles of the EPC 1973 are still applicable to the present application and which Articles of the EPC 2000 shall apply.

2. The appeal is admissible.

3. Inventive step - Article 52(1) EPC, Article 56 EPC 1973

3.1 It was not contested that D1 discloses a medical container as defined in claim 1 of the current application having a negative (or "inverse") barcode applied thereon.

The barcode used in a preferred embodiment of D1 is of the type designated as NDC 128 under the Health Industry Bar Code (HIBC) standard (page 7, lines 4-5). The National Drug Code (NDC) is composed of three segments, each segment representing a different type of information. In particular, the first segment is made up of the labeler code which identifies the company involved with the manufacturing, packaging or distribution of the drug product. The second segment is made up of the product code and identifies the generic entity (i.e. the formulation), specific strength and dosage form of the product. The third segment represents the package code and identifies the package size.

The HIBC Supplier Labeling Standard defines a barcode configuration consisting of two data structures. The primary data structure contains the NDC as defined above, whilst the secondary data structure contains an indication of the quantity and/or expiration date and/or Lot/Batch/Serial Number. This secondary data structure is optional and may, at the discretion of the labeler, be added to the primary data structure. Thus, the HIBC encodes "fixed" information in the primary data structure and, optionally, "variable" information in the secondary data structure.

3.2 The barcode of D1 only appears to contain the NDC information which, using the language of the HIBC standard, may be denoted as fixed information. The subject matter of claim 1 is therefore distinguished from the disclosure of D1 in that - in addition to the fixed NDC information - the negative barcode also represents **variable** information.

3.3 This distinguishing feature enables all relevant manufacturing data characterising the medical product to be encoded and displayed in readable form in the barcode. The objective technical problem to be solved with respect to D1 may therefore be regarded to be the provision of a medical container labelled with a barcode which represents all relevant manufacturing data.

3.4 In view of the closest prior art and the problem to be solved, the skilled person may be considered to be a practitioner active in the technical field of barcode labeling of medical products. Given that D1 makes explicit reference to the HIBC standard (page 7, lines 4-5), it can be expected that the skilled person's basic knowledge will include the contents of this standard. Therefore, the skilled person would have been aware of the possibility to optionally include variable information such as the expiration date or the lot/batch/serial number in the barcode and would at least contemplate encoding variable information of this nature in the barcode when appropriate. Consequently, the subject matter of claim 1 cannot be considered to comprise an inventive step.

3.5 It is indicated in the application that the hot-stamping system used to apply the barcode to the substrate in D1 is inappropriate for printing images representative of variable information. To print each image, a corresponding metal stamp die has to be produced. The appellant was of the opinion that the hot-stamping system used in D1 could only be feasibly used to print barcodes whose contents are restricted to

fixed information because it would be too time consuming and costly to produce a new metal die whenever one of the parameters (e.g. batch number) changes.

The Board cannot follow this reasoning. The expiration date, for example, is commonly represented in the month/year format (MMYY), meaning that all packages produced within a single month would carry the same expiration date. In view of the sheer quantities of packages which are produced, the Board has its doubts that it would be inappropriate to produce a new metal die each time (once a month) the expiration date changes.

Thus, this argument does not convince the Board that the skilled person would be discouraged from including variable information in the barcode of D1.

3.6 The appellant argued that the only prior art citation which mentioned a bar code representing fixed information and variable information is D2. The idea behind the system of D2 was that the item was identified by a fixed barcode (the item identification does not change) and that this identification was correlated with pricing information which was stored in a central database and contained in the shelf barcode. Such a system obviated the need to re-barcode all the items stored on the shelf. It was submitted that D2 only disclosed the bar code in conjunction with a shelf label, the variable information representing the price of the item on the shelf; the shelf barcode could be changed as and when the pricing information in the central database changed. This arrangement would tend

to teach away from individually labelling items with variable information which may change within the shelf-life of the product.

In the view of the Board, the variable information of the current application represents values such as the batch number, production time or expiration date, none of which will change once the barcode has been printed on the product. Arguments relating to the variable information contained in the shelf label therefore do not apply.

3.7 In summary, the appellant's arguments contained in the grounds of appeal do not convince the Board that claim 1 comprises an inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

R. Schumacher B. Schachenmann