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**Datasheet for the decision
of 14 May 2009**

Case Number: T 0764/07 - 3.5.03

Application Number: 99117287.5

Publication Number: 0994399

IPC: G05B 19/042

Language of the proceedings: EN

Title of invention:

Monitoring system with power supply built therein

Applicant:

TLV Co., Ltd.

Opponent:

-

Headword:

Sensor unit/TLV

Relevant legal provisions:

RPBA Art. 13(3)

Relevant legal provisions (EPC 1973):

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Keyword:

"Requests filed after summons for oral proceedings - not admitted"

"Automatic remittal after citation of a new document (no)"

Decisions cited:

T 1913/06

Catchword:

-



Case Number: T 0764/07 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 14 May 2009

Appellant: TLV Co., Ltd.
881 Nagasuna
Noguchi-cho
Kakogawa-shi
Hyogo 675-8511 (JP)

Representative: van Loon, C.J.J.
Vereenigde
Postbus 87930
NL-2508 DH Den Haag (NL)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 17 October 2006
refusing European application No. 99117287.5
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: A. S. Clelland
Members: B. Noll
R. Moufang

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European application no. 99117287.5.
- II. The reason given for the refusal was that the invention as claimed in claim 1 of the sole request lacked novelty (Article 54(1)(2) EPC) having regard to the disclosure of document

D6: US-A-5 481 481.

The grounds for the decision also contained additional remarks to the effect that claims 2 and 3 lacked inventive step and claim 4 lacked novelty. Inter alia, reference was made to D6 in these respects as well.

- III. In the notice of appeal the appellant requested that the decision of the examining division be set aside and that a patent be granted based on the same claims as the appealed decision, i.e. claim 1 as filed on 16 August 2006 and claims 2 to 4 as filed on 9 September 2005.

Claim 1 of this request reads as follows:

"A monitoring system, comprising:
a sensor unit (2) comprising sensors (5, 6; 17, 19);
an arithmetic display unit (4, 7, 8, 12, 14, 26);
a driving power supply (10, 16, 23, 28) incorporated in at least one of said sensor unit (2), said arithmetic display unit (4, 7, 8, 12, 14, 26), characterized in that

the objects to be monitored are articles (1) such as a valve or a steam trap through which a fluid flows; the sensor unit (2) comprises sensors (5, 6; 17, 19) adapted to sense one or plural of physical quantities including temperatures, pressure, vibrations, sound, conductance, concentrations, or pH, in the objects to be monitored; the arithmetic display unit (4, 7, 8, 12, 14, 26) is adapted to determine the operation of an object, based on each value sensed by said sensor unit, and to decide whether said object will lead to a failure in near future; and wireless communication modules (9, 11; 22, 25) are provided for transmitting and receiving signals to and from said sensor unit (2) and said arithmetic display unit (4, 7, 8, 12, 14, 26), wherein at least one sensor (5, 6; 17, 19) of said sensor unit and the communication module (9) of said sensor unit are provided in divided form, and said at least one sensor (5, 6; 17, 19) is directly attached to said object to be monitored, whereas said communication module (9) is mounted away from said sensor in the vicinity of said object."

With the statement of grounds a set of claims 1 to 5 of an auxiliary request was filed and a conditional request made for oral proceedings.

IV. In a communication accompanying a summons to oral proceedings the board expressed its provisional opinion on the case. It was said that claim 1 of the main request inter alia lacked clarity (Article 84 EPC) and that its subject-matter lacked novelty (Article 54(2) EPC) having regard to the disclosure of D6. Claim 1 of

the auxiliary request was said to include added subject matter (Article 123(2) EPC) and to lack clarity and an inventive step.

V. In response to the summons the appellant filed, with a letter dated 18 March 2009, sets of claims of a new main and a new auxiliary request.

VI. In the course of the oral proceedings on 24 April 2009 the appellant filed a further set of claims and requested that this set be treated as the first auxiliary request and the claims filed as an auxiliary request with the letter dated 18 March 2009 be renumbered as the second auxiliary request.

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

"A system for monitoring objects, comprising:
a sensor unit (2) comprising sensors (5,6; 17,19);
an arithmetic display unit (4, 7, 8, 12, 14, 26);
- driving power supply (10, 16, 23, 28)
incorporated in at least one of said sensor unit
(2), said arithmetic display unit (4, 7, 8, 12, 14,
26); wherein
- the sensor unit (2) comprises sensors (5, 6; 17,
19) adapted to sense one or plural of physical
quantities including temperatures, pressures,
vibrations, sound, conductance, concentrations, or
PH, in the object to be monitored;
- the arithmetic display unit (4, 7, 8, 12, 14, 26)
is adapted to determine or decide, based on each
value sensed by said sensor unit, whether an object
to be monitored normally operates; the system
further comprising:

- wireless communication modules (9, 11; 22, 25) for transmitting and receiving signals to and from said sensor unit (2) and said arithmetic display unit (4, 7, 8, 12, 14, 26); wherein
- at least one sensor (5, 6; 17, 19) of said sensor unit and the communication module (9) are provided in divided form, and at least one sensor (5, 6; 17, 19) is directly attached to said object to be monitored, wherein the sensor and the communication module are separated from each other;
- the sensor unit (2) being arranged to send information corresponding to identification codes of each object being monitored for enabling monitoring of the objects to be effected with a frequency corresponding to the degree of importance of the objects to be monitored; wherein the system further comprises a timer arranged for energizing the sensor unit to perform sensing upon an event the timer passes beyond a set time."

Claim 1 of the first auxiliary request reads:

- "A monitoring system comprising a sensor unit (2) associated with an object conceived to be monitored [sic], wherein
- the sensor unit (2) comprises sensors (5,6; 17,19) adapted to sense one or plural of physical quantities including temperatures, pressures, vibrations, sound, conductance, concentrations, or PH, in the objects to be monitored;
- characterized in that the sensor unit (2) comprises
- a central processing unit (CPU) (7) for computing values detected by the sensors (5, 6) and for comparing them with a reference value;

- driving power supply (10, 16, 23, 28) incorporated in the sensor unit (2),
- a timer provided in the CPU (7) wherein
- the sensor unit (2) is energized to perform sensing with a frequency corresponding to the degree of importance of the objects to be monitored; wherein the timer is arranged for enabling said energizing upon an event the timer passes beyond a set time."

Claim 1 of the second auxiliary request reads:

"A system for monitoring objects, comprising:

- a sensor unit (2) comprising sensors (5,6; 17,19) adapted to sense one or plural of physical quantities including temperatures, pressures, vibrations, sound, conductance, concentrations, or PH, in the objects to be monitored;
- a central processing unit (CPU) for computing values detected by the sensors (5, 6) and for comparing them with a reference value;
- driving power supply (10, 16, 23, 28) incorporated in the sensor unit (2),
- wireless communication modules (9, 11; 22, 25) for transmitting and receiving signals to and from said sensor unit (2); wherein
- the sensor unit (2) is energized to perform sensing with a frequency corresponding to the degree of importance of the objects to be monitored; wherein

the system further comprises a timer arranged for said energizing upon an event the timer passes beyond a set time."

VIII. In the course of the oral proceedings the following document was introduced by the board of its own motion in accordance with Article 114(1) EPC:

D9: R. G. Prabhu Desai et al.: "WEATHER STATION FOR SCIENTIFIC DATA COLLECTION", Second Indian National Conference on Harbour and Ocean Engineering (Inchoe-97), Thiruvananthapuram, December 7-10, 1997.

IX. The appellant requested that the decision under appeal be set aside and the case be remitted to the department of first instance for further prosecution on the basis of claims 1 to 6 of the main request, filed with letter of 18 March 2009, or, in the alternative, claims 1 to 10 of the first auxiliary request submitted during the oral proceedings, or claims 1 to 9 of the second auxiliary request, filed as "auxiliary request" with letter dated 18 March 2009. As an auxiliary measure, the appellant requested the board not to announce its decision during the oral proceedings.

X. At the end of the oral proceedings the Chairman announced that the debate was closed and that a decision would be given in writing.

Reasons for the Decision

1. *Admissibility of the main, first and second auxiliary requests*

1.1 Claim 1 of the main request, filed in response to the summons, includes the feature of "a timer arranged for energizing the sensor unit to perform sensing upon an event the timer passes beyond a set time". Although disclosed in paragraph [0019] of the published application this feature was not present in any of the claims considered in the course of the search and examination procedures. The feature appeared for the first time in dependent claim 2 of the auxiliary request filed with the statement of grounds of appeal and was first included in an independent claim in the requests filed in response to the summons to oral proceedings.

It was argued by the appellant that by virtue of this feature the invention as claimed provided a solution to the technical problem of saving battery power. However, claim 1 on which the impugned decision was based (see point III above) related to a different problem, which is stated in paragraph [0006] of the published application as "providing less installation expenses and obtaining a stable output result of monitoring for a predetermined period". Thus the technical problem to be solved has substantially changed by the introduction of the feature relating to the timer.

1.2 The board notes that none of the documents cited in the search report addresses the problem of saving battery power. This is not surprising: from the original set of claims and the technical problem stated in the introductory portion of the description it would not have been expected that battery saving would be an issue requiring to be considered for search.

- 1.3 In the course of the oral proceedings the board exercised its discretion pursuant to Article 114(1) EPC and drew attention to document D9, which shows that the problem of saving battery power in sensor units, for automated weather stations in the specific case, was known to the public before the priority date of the application.

- 1.4 The appellant argued that the feature relating to the timer was not known from D6 but was not prepared to comment on whether, in view of the disclosure of newly introduced document D9, the solution to the problem of saving battery power by the provision of a timer for supplying electrical power to a sensor unit only at the time it was expected to sense a parameter would have been obvious to the skilled person.

- 1.5 In summary, the board was confronted with subject-matter which differed in substance from the subject-matter previously claimed to such an extent that new issues as to inventive step were raised which could not effectively be dealt with in the oral proceedings since it was not clear that the matter had been searched and the appellant itself was not in a position to deal with these issues.

- 1.6 Pursuant to Article 13(3) of the Rules of Procedure of the Boards of Appeal (OJ EPO 2007, 536) "Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board ... cannot reasonably be expected to deal with without adjournment of the oral proceedings". As pointed out above (point 1.5) the amendments made to the claims after the summons to oral proceedings lead to the situation addressed in Article 13(3) RPBA. For

this reason the board exercises its discretion not to admit the amendments. Consequently, the main request including claim 1 is not admitted.

1.7 Claim 1 of each of the first and the second auxiliary requests likewise includes the feature relating to the timer so that the above considerations apply, *mutatis mutandis*, to the first and the second auxiliary requests. For this reason the first and the second auxiliary requests are not admitted either.

2. *The request for remittal*

2.1 The appellant requested remittal to the department of first instance for further prosecution on the basis of the main, the first and the second auxiliary requests and argued that the standing practice of the boards of appeal was to remit a case if a new document was cited during the oral proceedings, in order to give the appellant the opportunity to present its case before two instances.

2.2 It is however the established jurisprudence of the boards of appeal that an appellant has no absolute right to have each individual issue considered by two instances, Article 111(1) EPC leaving it to the discretion of the board whether to exercise any power within the competence of the department of first instance or to remit the case to that department (see *inter alia* T 1913/06 of 30 September 2008, point 4.3 of the reasons).

In the present case in view of the newly introduced subject-matter the board considers it appropriate to exercise its discretion not to admit the appellant's

requests into the procedure (see point 1 above). Thus, the absence of any admissible request means that there is no basis on which any remittal might take place.

3. There is accordingly no request on file on the basis of which the appeal could be allowed and the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland