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Datasheet for the decision of 8 May 2009

Case Number: T 0833/07 - 3.4.01

Application Number: 03727374.5

Publication Number: 1547007

IPC: G06K 19/077

Language of the proceedings: EN

Title of invention:
Electronic card with at least one adhesive surface

Applicant:
Fiderveuropa Società Fiduciaria e di Revisione

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)
RPBA Art. 13(1)

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

Keyword:
-

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0833/07 - 3.4.01

D E C I S I O N
of the Technical Board of Appeal 3.4.01
of 8 May 2009

Appellant: Fiderveuropa Società Fiduciaria e di Revisione S.p.A.
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 26 February 2007 refusing European application No. 03727374.5 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

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

Summary of Facts and Submissions

I. The European patent application No. 03727374.5 (European publication number 1 547 007; International publication number WO-A-2004/032044) was refused by the examining division which, in its decision, held that the application did not meet the requirements of Article 54(1) and 56 EPC 1973.

II. The examining division considered the following prior art documents inter alia:

(D4) EP-A-0 512 543;
(D5) EP-A-0 595 549.

III. The applicant (appellant) lodged an appeal against the decision of the examining division.

IV. Oral proceedings took place on 8 May 2009.

V. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of a set of claims 1-9 filed with the grounds of appeal dated 2 May 2007 as main request, or sets of claims 1-9 submitted at the oral proceedings as auxiliary requests I, II and III.

VI. The wording of claim 1 of the main request reads as follows:

"*Battery less, flexible, reusable, electronic card comprising a support (10) inside which at least one processing logic unit (11) and at least one re-writable area (12) for storing data are arranged, said support*

(10) containing a transceiver device (13,14) able to communicate with a corresponding remote apparatus (51) available to a user, at least one side of the support (10) being associated with a layer of adhesive material (20) for application of the electronic card to the place of use, characterized in that said adhesive is a low-strength adhesive able to determine the safe removing of the card itself, from the place of use and a new application of the same on a different place."

VII. The wording of claim 1 of the auxiliary request I reads as follows:

"*Reusable, electronic card comprising a support (10) inside which at least one processing logic unit (11) and at least one re-writable area (12) for storing data are arranged, said support (10) containing a transceiver device (13,14) able to communicate with a corresponding remote apparatus (51) available to a user, at least one side of the support (10) being associated with a layer of adhesive material (20) for application of the electronic card to the place of use, characterized in that said adhesive is a adhesive able to determine the safe removing of the card itself.*"

VIII. The wording of claim 1 of the auxiliary request II reads as follows:

"*Reusable, electronic card to be associated with a container comprising a support (10) inside which at least one processing logic unit (11) and at least one re-writable area (12) for storing data are arranged, said support (10) containing a transceiver device (13,14) able to communicate with a corresponding remote*

apparatus (51) available to a user, at least one side of the support (10) being associated with a layer of adhesive material (20) for application of the electronic card to the container, characterized in that said adhesive is a adhesive able to determine the safe removing of the card itself."

IX. The wording of claim 1 of the auxiliary request III reads as follows:

"*Reusable, electronic card associated with a container comprising a support (10) inside which at least one processing logic unit (11) and at least one re-writable area (12) for storing data are arranged, said support (10) containing a transceiver device (13,14) able to communicate with a corresponding remote apparatus (51) available to a user, at least one side of the support (10) being associated with a layer of adhesive material (20) for application of the electronic card to the container, characterized in that said adhesive is a adhesive able to determine the safe removing of the card itself.*"

X. Claims 2-9 of all the requests are dependent claims.

XI. The revised version of the European Patent Convention or EPC 2000 entered into force on 13 December 2007. In the present decision, reference is made to "*EPC 1973*" or "*EPC*" for EPC 2000 (EPC, Citation practice, pages 4-6) depending on the version to be applied according to Article 7(1) of the Revision Act dated 29 November 2000 (Special Edition No. 1 OJ EPO, 196) and the decisions of the Administrative Council dated 28 June 2001

(Special Edition No. 1 OJ EPO 2007, 197) and 7 December 2006 (Special Edition No. 1 OJ EPO 2007, 89).

Reasons for the Decision

1. The appeal is admissible.

2. Main request

2.1 Claim 1 of the main request corresponds to claim 1 of the published application with the following amendments inter alia:

- The electronic card is "*battery-less*";
- The electronic card is "*flexible*";
- The low-strength adhesive is "*able to determine the safe removing of the card itself, from the place of use and a new application of the same on a different place*".

2.1.1 The published application does not disclose expressis verbis the feature that the electronic card is battery-less.

The appellant, however, submitted that the absence of an explicit reference to this feature throughout the disclosure of the published application was evidence for the fact that the card was indeed battery-less, as shown in Figure 1. Such a view was confirmed by the disclosure on page 3, lines 30-33, according to which the "*activation of transmission/reception is performed by an induction circuit which is controlled by a user's transceiver*".

These arguments are not convincing.

Pursuant to Article 83 EPC 1973, an application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. It follows from this requirement that the completeness of the disclosure should comply with the knowledge of the skilled person who is the addressee of the application. In particular, the application need not mention or reiterate points which belong to the technical common knowledge.
In the present case, so-called passive, active and semi-passive transponder tags were well-known in the art at the priority date of the application. Passive tags have no internal power supply, so that the electrical current induced in the tag antenna by the incoming signal provides enough power for the integrated circuit of the tag to be powered and transmit a response. Active tags, unlike passive ones, have their own power source which is used to power the integrated circuit and to broadcast the response signal to the reader. Semi-passive tags are similar to active tags in that they have their own power source which powers the integrated circuit but not the broadcasting of a signal. Thus, in the light of this background technical knowledge, the skilled person, when reading the present specification, will not necessarily conclude that it implicitly concerns a passive, i.e. battery-less, electronic card only. Rather, the card may be passive, active or semi-passive. In case of a passive or semi-passive card, the induction circuit mentioned on page 3, lines 30-33 will provide for signal broadcasting.

2.1.2 The published application does not disclose expressis verbis the feature that the electronic card is flexible.

The appellant, however, submitted that support for this amendment was provided by the feature that "*the electronic card 1 according to the present invention is substantially composed of a support 10 made with a layer of material having a suitable thickness and rigidity*" (page 2, lines 26-29, of the published application). The wording "*suitable thickness and rigidity*", when read in the context of the whole disclosure of the application, did not mean that the card was not flexible. Rather, the card had a mechanical resistance suitable for the envisaged use. Figure 3c, in particular, showed the application of the card on a car front bumper for allowing automatic opening of specific barriers. Since a bumper was not flat, the use of a rigid card would be impractical since it would not adhere properly.

These arguments are not convincing either.

The usual meaning of the term "*rigid*" is "*non flexible*" or "*unable to bend or be forced out of shape*" (New Oxford Dictionary of English, Oxford University Press 2001). With this understanding, the citation on page 2, lines 26-29 in isolation, would not support the amendment that the card is flexible.
Even interpreting this passage in the light of the disclosure of the whole application would not lead to a different conclusion. The expression "*suitable thickness and rigidity*" in the citation mentioned above makes clear that the material of the support has a

thickness and rigidity adapted to the envisaged use of the electronic card. Employing the card in the situations illustrated in Figures 3a and 3b, there is no reason to believe that the card may be flexible because it is applied on a flat surface of a container or a shelf, respectively. The further use shown in Figure 3c does not lead to a different conclusion. Indeed, either a car front bumper may have a flat surface on which a rigid card can be applied or a rigid card may be adhered to a flat surface of a card holder that is then applied to the bumper.
In summary, it cannot be unambiguously derived from the citation on page 2, lines 26-29, per se or in combination with Figures 3a, 3b and 3c that the card is flexible.

2.1.3 As regards the feature that the low-strength adhesive is able to determine the safe removing of the card itself from the place of use and a new application of the same at a different place, the applicant submitted that this amendment was based on the disclosure that a low-strength adhesive allowed the card to be moved and reused (page 5, lines 17-19).

There is no reason to deny a basis for the feature that the card can be removed from the place of use, if a low-strength adhesive is used. In this respect, the need of safe removing the card is clearly linked to its reusability. However, the published application does not provide any basis, either explicit or implicit, for the fact that the card, once removed from its place of use, finds a new application at a different place. The appellant held that it was not reasonable to think that there was no basis for the application of the card on a

new surface. However, for the purposes of Article 123(2) EPC, the question to be answered is not whether it is reasonable to assume that a specific may conceivably be implied in the original disclosure, but rather whether a specific feature may be directly and unambiguously derived therefrom. This is not the case.

2.2 It results from the foregoing that, contrary to the requirement of Article 123(2) EPC, claim 1 of the main request has been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

2.3 Hence, the main request is not allowable.

3. Auxiliary request I

3.1 Document D4 (column 1, lines 5-13) relates to an electronic device intended for use as a tag to be attached to a container so as to identify contents thereof. The electronic tag has a facility for storing delivery information and is equipped with a responding means for transmitting delivery information stored therein in response to a query signal received from an interrogating apparatus.

Figure 1 (column 10, line 44, to column 11, line 12) shows the overall structure of an electronic tag 1 comprising a delivery slip, a plurality of slip copies and a responding circuit 4 for accomplishing electronic tag functions. The basic configuration of the responding circuit 4 comprises an antenna 10 for transmitting and receiving data, an integrated circuit 11 and a battery 12 for supplying power to the

integrated circuit 11. Data is exchanged with an interrogator via radiofrequency waves. Delivery data stored in the integrated circuit 11 comprises fixed data and variable data.

According to a particular embodiment shown in Figure 62 (column 50, lines 33-42), a home-delivery slip comprises, among other sheets, a sender slip copy, a delivery slip copy and a recipient slip copy. A responding circuit 371 is fixed on a surface of the delivery slip copy. The responding circuit 371 "*is formed into a card*" (a "*resin-mold card*"). Thus, "*it can be easily affixed to or peeled off from the delivery slip copy*" with the advantage that it "*can be easily reutilized*" (column 51, lines 31-38). Moreover, the responding circuit 371 embeds, among other components, an antenna 374, an integrated circuit 372 and a battery 373. The configuration of the responding circuit 371 is similar to that of Figure 2 (column 50, lines 41 and 42) which shows a responding circuit 4 comprising inter alia an antenna 10 for transmitting and receiving data, an integrated circuit 11 with a central processing unit 27 and a RAM unit 29, and a battery 12 (column 11, lines 29-45).

The embodiment illustrated in Figures 63 and 64 concerns a concrete implementation of the tag discussed previously. In addition to the features of the responding circuit outlined above, data write terminals 384 are provided which enable data to be entered into the re-writable memory unit 389 (column 51, line 55 to column 52, line 26).

3.2 Using the terminology of claim 1 of the auxiliary request I, the particular embodiment of D4 mentioned above concerns a reusable electronic card applied to a place of use (delivery slip copy). The electronic card comprises a support (resin-mold card) which contains a processing logic unit (integrated circuit), a re-writable area (memory unit) for storing data and a transceiver device able to communicate with a corresponding remote apparatus (interrogator) available to a user.

Therefore, the subject-matter of claim 1 of the auxiliary request I differs from the electronic card according to D4 (Figures 62 to 64) in that at least one side of the support is associated with a layer of adhesive material for application of the electronic card to the place of use, whereby the adhesive is able to determine the safe removing of the electronic card itself.

As already stated above with regard to D4 (Figure 62), the responding circuit 371 is accommodated in a resin-mold card which can be easily affixed to or peeled off from the delivery slip copy representing the place of use. This solution offers the advantage of reusability of the card. In the light of this disclosure, a skilled person would immediately recognize that a low-strength adhesive would be a suitable means for easily and detachably affixing the card to the delivery slip copy so that it can be removed without being damaged for being reutilized. In this respect, it is noted that the use of adhesives for securing a radio frequency transponder tag to a place of use is known in the art. For example, document D5 discloses such a solution.

With regard to Figure 1, an identification tag is attached to a conventional airline baggage identification label. To facilitate securing of the former to the latter, one side of a flexible polyester substrate of the tag is provided with an adhesive layer protected by a peel-off paper layer. Accordingly, in order to apply the tag to the airline baggage identification label the cover paper is removed and the tag is pressed against the baggage label (column 6, lines 22-34). Document D5 discloses that the adhesive "*may be*" a high performance adhesive (column 6, lines 27 and 28). However, the skilled person would easily realize that the nature of the adhesive is related to the intended use of the tag, in particular whether or not it should be detachably affixed for being reused.

3.3 The appellant submitted that the electronic tag 1 shown in Figure 1 of D4 was a single entity including a delivery slip with a plurality of slip copies and an electronic responding circuit 4 for accomplishing electronic tag functions. The same applied to Figure 63. With this understanding, the electronic tag affixed to a parcel box was not reusable because the slip copies contained information intended for a single delivery. Document D4 (column 58, lines 40-53) envisaged the possibility of recycling a used parcel box rather than reusing the electronic tag. In such a case, since a new delivery slip was affixed to the used parcel box, two responding circuits coexisted thereon. However, the responding circuit of the used delivery slip was rendered inoperative either by forcible discharging the embedded battery or by removing a power supply connection wire (column 53, lines 15-28; Figures 63 and 64). Thus, the reusable electronic card according to

the present invention substantially differed from the electronic tag disclosed by D4.

These arguments are not convincing.

The expression "*electronic card*" within the meaning of the present invention (Figure 1) defines a card essentially made of a support containing a processing logic unit, a re-writable area for storing data and a transceiver device. The card is intended to be affixed to a place of use in a removable manner. A one-to-one correspondence can be established between such a card and the responding circuit 371 shown in Figure 62 of D4, for example. Indeed, as already stated, the responding circuit is formed into a resin-mold card to be detachably affixed to a delivery slip representing the place of use. Clearly, in the embodiment described on column 51, lines 31-35, in which the responding circuit is peeled off the delivery card for re-use, it is imperative that the circuit still functions after its removal. Thus, the special configuration of the power supply connection wire illustrated in Figures 63 and 64, which serves to disable the circuit in the case that the circuit is left attached to the parcel box, will have to be omitted and a connection located entirely within the responding circuit will have to be adopted. Thus, whilst disabling of the electronic tag is envisaged in D4, it is nevertheless foreseen that the tag can be peeled off from the delivery slip copy and reused.

3.4 It results from the foregoing that contrary to the requirement of Article 56 EPC 1973, the subject-matter of claim 1 of the auxiliary request I does not involve

an inventive step with regard to document D4 alone or in combination with D5.

3.5 Hence, the auxiliary request I is not allowable either.

4. Auxiliary request II

4.1 The amendments to claim 1 of the auxiliary request II with respect to claim 1 of the auxiliary request I consists in the introduction of the expression "*to be associated with a container*" after "*electronic card*" and the replacement of "*place of use*" with "*container*".

4.2 In the appellant's view, the submission of this request during the oral proceedings was occasioned by the Board's objection of lack of inventive step of the subject-matter of claim 1 of the auxiliary request I with regard to document D4.

Without prejudice to the appellant's justification for the late submission, the new request may be admitted and considered at the Board's discretion (Article 13(1), first sentence, RPBA). In exercising this discretion, attention should be paid as to whether the amended claim meets the objection occasioning the amendments and/or gives rise to new objections.

In the present case, it appears prima facie that the amendments do not render the claimed subject-matter inventive with regard to D4. Indeed, according to this document (column 1, lines 5-8), a tag is attached to a container so as to identify contents thereof.

Moreover, new objections could be raised against the amended claim. The amendment "*to be associated with a container*" renders the extent of protection conferred by the claim unclear owing to the mention of a container in a claim for an electronic card.

4.3 For these reasons, the auxiliary request II is not admissible.

5. Auxiliary request III

5.1 The amendments to claim 1 of the auxiliary request III with respect claim 1 of the auxiliary request II consists in the replacement of the expression "*to be associated with a container*" with "*associated with a container*".

5.2 This request suffers from the same drawbacks mentioned above with regard to the auxiliary request II.

5.3 Hence, the auxiliary request III is not admissible either.

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar | The Chairman:

R. Schumacher | B. Schachenmann