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**Datasheet for the decision
of 25 October 2010**

Case Number: T 0346/08 - 3.4.03

Application Number: 05075146.0

Publication Number: 1557804

IPC: G07G 1/14

Language of the proceedings: EN

Title of invention:
Vending control apparatus

Applicant:
January Patents Limited

Opponent:
-

Headword:
-

Relevant legal provisions:
-

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

Keyword:
"Inventive step - main request (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0346/08 - 3.4.03

D E C I S I O N
of the Technical Board of Appeal 3.4.03
of 25 October 2010

Appellant: January Patents Limited
CBE House
IDA Business Park
Claremorris
County Mayo (IE)

Representative: McCarthy, Denis Alexis
MacLachlan & Donaldson
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Dublin 2 (IE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 13 August 2007
refusing European patent application
No. 05075146.0 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: G. Eliasson
Members: T. Häusser
P. Mühlens

Summary of Facts and Submissions

I. This concerns an appeal by the appellant (applicant) against the decision of the examining division refusing European patent application No. 05 075 146 for lack of inventive step having regard to the following documents:

D1: US 5 889 676 A,

D2: DE 93 21 417 U.

II. The appellant requests that the decision be set aside and a patent be granted on the basis of one of the following requests:

Main request:

- claims 1 to 21 as filed with the letter dated 28 September 2010.

Auxiliary request:

- claims 1 to 16 as filed at the oral proceedings before the examining division of 21 June 2007.

The appellant also requests that oral proceedings be appointed, should the board not allow the appeal.

III. The wording of claim 1 according to the main request, reads as follows:

"1. An electronic point of sale (EPOS) multi-task apparatus which is linkable to a main server over a network, the apparatus comprising a central processing unit and associated memory, a user input device such as a keyboard and a bar code scanning means, a printer and a releasable and lockable till drawer, the apparatus

having a plurality of software control modules for controlling separate ones of the multi task functions, characterized in that the EPOS apparatus has means for controlling at least one apparatus for vending packed products, the vending apparatus control means comprising a software module operable to receive commands from a user, and in response to acceptable commands, the software module is operable to activate a dispensing mechanism of the vending apparatus whereby the required packed product is dispensed."

IV. In relation to the main request the appellant argued essentially as follows:

Document D1 was concerned with avoiding malfunctions in a point of sales system and provided such a system comprising an in-store controller and a point-of-sale terminal, both being connected to a fuel dispenser controller via a switching device and being provided with control programs for controlling that controller. The appellant's invention achieved a reduction of complexity of the system of D1 by removing a number of redundant parts such as the in-store controller and the switching device.

Furthermore, the invention solved issues surrounding theft and fraud related to vending products by creating a vending apparatus having one point of access and making one person accountable. Document D6, on the other hand, did not describe an electronic point of sale apparatus capable of controlling a vending apparatus for dispensing packed products as called for in claim 1, but only an electronic cash register performing the programming of the control of a holder of cigarettes.

Consequently, in order to arrive at the appellant's invention, the skilled person needed to perform - starting from D1 and considering D6 - a series of five steps involving technical considerations, which indicated the presence of inventive step.

Reasons for the Decision

1. *Admissibility*

The appeal is admissible.

2. *Main request - amendments*

Claim 1 is based on claim 1 as originally filed and on the description as originally filed (page 11, lines 25-27).

Dependent claims 2-8 are based on the description as originally filed (page 11, last paragraph - page 12, first paragraph).

Dependent claims 9-21 are based on original claims 2-9 and 11-15, respectively.

The description has been brought into conformity with the amended claims and supplemented with an indication of the relevant content of document D1.

Accordingly, the board is satisfied that the amendments comply with the requirements of Article 123(2) EPC.

3. *Main request - novelty*

- 3.1 Document D1 relates to an electronic point-of-sale (EPOS) multi-task apparatus (Figure 3, reference 21; column 4, line 61) which is linkable to a main server over a network (column 4, lines 64-65; column 2, lines 60-63), the apparatus comprising a central processing unit and associated memory (implicit, see

column 4, lines 64-65; column 2, lines 39-40), a user input device such as a keyboard and a bar code scanning means, a printer and a releasable and lockable till drawer (column 4, lines 2-5 and 64-65; column 2, lines 48-51). The apparatus has a plurality of software control modules for controlling separate ones of the multi task functions (column 4, lines 64-65; Figure 3, references 21, 34, 15, 36; column 3, lines 3-5; column 4, lines 20-22 and 36-40).

3.2 The appellant argued that the apparatus of document D1 contained further components and was therefore more complex than the claimed solution (see item IV above). The board notes, however, that the apparatus of claim 1 does not exclude the presence of other components in the apparatus besides the claimed ones, because it is stated that the apparatus *comprised* the claimed components. Therefore, the question whether the apparatus of D1 necessarily comprises an in-store controller and a switching device (D1, column 3, lines 3-5), or indeed any other component is not relevant for assessing novelty.

3.3 The subject-matter of claim 1 thus differs from the EPOS apparatus of document D1 in that

- the EPOS apparatus has means for controlling at least one apparatus for vending packed products, the vending apparatus control means comprising a software module operable to receive commands from a user, and in response to acceptable commands, the software module is operable to activate a dispensing mechanism of the vending apparatus whereby the required packed product is dispensed.

The subject-matter of claim 1 is therefore new over document D1.

- 3.4 Neither document D6 nor the remaining cited prior art documents are closer to the subject-matter of claim 1.

Claims 2 to 21 are dependent on claim 1 providing further limitations. The subject-matter of these claims is therefore also new.

Accordingly, the subject-matter of claims 1 to 21 is new (Articles 52(1) EPC and 54(1), (2) EPC 1973).

4. *Main request - inventive step*

- 4.1 The closest prior art to the subject-matter of claim 1 is regarded to be document D1.

Document D1 discloses a bar-code reader for optically scanning the bar-codes mounted on the articles being sold and a keyboard for inputting prices of articles being sold (column 2, lines 47-50). The sold items either have to be scanned in or typed in by the cashier. The distinguishing features identified above (see point 3.3), on the other hand, allow the goods to be stored in a vending machine thus eliminating the discrepancies between items purchased and items sold.

Accordingly, the objective technical problem to be solved is to eliminate the discrepancies between items purchased and items sold, i.e. to increase the security against theft (see also the description on page 4, lines 18-21).

- 4.2 In order to solve the posed problem the skilled person would consider the document D6 which is also concerned with eliminating the discrepancies between items purchased and items sold (page 2, second paragraph).
- 4.2.1 Document D6 describes a cigarette container with a selection keyboard 14 (Figure 1; page 5, first paragraph). When a customer selects the desired type of cigarettes on the keyboard, a corresponding packet of cigarettes is automatically conveyed to the cashier who hands it over to the customer on payment. Document D6 also discloses an alternative in which the cashier can trigger the output of a cigarette packet by means of another keyboard 20 according to the customer's order. The other keyboard 20 is movable and connected to the cigarette container by cable (page 7, second paragraph).
- 4.2.2 A connection of the keyboard to the cash register is however not disclosed. It is merely disclosed that the *programming* of the control mechanism of the cigarette container could be performed with the aid of the keyboard of an electronic cash register (page 7, first paragraph).
- 4.2.3 Document D6 would thus prompt the skilled person to provide a cigarette container as disclosed in document D6 near one of the point-of-sale (POS) terminals of document D1, thus eliminating the discrepancy between items purchased and items sold by providing the items in a vending machine. Furthermore, following the teaching of D6, he would consider performing the *programming* of the control mechanism of the cigarette container with the aid of the keyboard the POS terminal (D6, page 7, first paragraph).

4.2.4 As it is neither disclosed in D6 that the *cash register* comprises any means for activating the dispensing mechanism of the cigarette apparatus, nor that a *software module* is operable to activate the mechanism, the skilled person would not be led to provide a software module in the POS terminal operable to receive commands from a user and - in response to acceptable commands - to activate a dispensing mechanism of the cigarette container. The teaching of document D6 would therefore not lead the skilled person to the subject-matter of claim 1.

4.2.5 Furthermore, the solution of claim 1 further increases the security against theft compared to the solution of document D6 since the complete sales process is controlled and registered by the EPOS terminal. Hence the claimed system contributes to preventing theft by customers as well as employees. The subject-matter of claim 1 can thus not be considered as a mere alternative solution to that proposed in document D6.

4.3 The remaining prior art documents do not contain any teaching leading the skilled person to the subject-matter of claim 1, which is therefore not considered to be obvious.

The subject-matter of claims 2 to 21 is also not considered obvious as these claims are dependent on claim 1.

Accordingly, the subject-matter of claims 1 to 21 of the main request involves an inventive step (Articles 52(1) EPC and 56 EPC 1973).

5. *Main request - other requirements of the EPC*

The description has been brought into conformity with the amended claims and supplemented with an indication of the relevant content of document D1 to comply with the requirements of Article 84 EPC 1973 and Rule 27(1)(b) EPC 1973.

The board is thus satisfied that the remaining requirements of the EPC are satisfied, so that a patent can be granted on the basis of the application documents according to the main request.

6. *Subsidiary requests*

Since the application documents according to the appellant's main request are allowable, neither the holding of oral proceedings nor the consideration of the application documents according to the appellant's auxiliary request is necessary.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent in the following version:

Main request:

- claims 1 to 21 as filed with the letter dated 28 September 2010;
- description page 1 as filed with letter dated 13 October 2010, pages 2, 2a as filed with the letter dated 26 July 2006, pages 3-5 as originally filed, and pages 6-13 as filed with the letter dated 28 September 2010;
- drawings sheets 1/12-6/12 and 12/12 as originally filed, sheets 7/12-11/12 as filed with the letter dated 10 June 2005.

The Registrar:

The Chairman:

S. Sánchez Chiquero

G. Eliasson