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Datasheet for the decision of 10 July 2012

Case Number: T 0141/09 - 3.5.05

Application Number: 03719001.4

Publication Number: 1506513

IPC: G06F 19/00, A61B 5/00

Language of the proceedings: EN

Title of invention:
System for point of care diagnosis and/or analysis

Applicant:
Philips Intellectual Property & Standards GmbH
Koninklijke Philips Electronics N.V.

Headword:
Point of care diagnosis/PHILIPS

Relevant legal provisions:
EPC Art. 123(2)
EPC 1973 Art. 56

Keyword:
"Inventive step - yes (after amendments)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0141/09 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 10 July 2012

Appellant I: (Applicant 1)
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Decision under appeal:
Decision of the Examining Division of the European Patent Office posted 26 August 2008 refusing European patent application No. 03719001.4 pursuant to Article 97(2) EPC.

Composition of the Board:

Chair: A. Ritzka
Members: M. Höhn
G. Weiss

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division, dispatched on 26 August 2008, refusing European patent application No. 03719001.4 on the grounds of lack of inventive step having regard to the disclosure of prior-art document:

D1: EP 1164530 A2.

II. The notice of appeal was received on 5 November 2008. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 19 December 2008. The appellant requested that the appealed decision be set aside and that a patent be granted on the basis of the sets of claims submitted as main request or as auxiliary requests I and II with the statement setting out the grounds of appeal. Oral proceedings were requested on an auxiliary basis.

III. A summons to oral proceedings scheduled for 10 July 2012 was issued on 9 March 2012. In an annex accompanying the summons the board confirmed the objection under Article 56 EPC 1973 that the subject-matter of independent claim 1 did not appear to involve an inventive step in the light of the disclosure of D1 combined with the teaching of D5 (WO 97/49077 A1), which was cited as prior art in the examination proceedings for D1 and which was introduced into the present proceedings by the board of its own motion in accordance with Article 114(1) EPC. The board gave its reasons for the objections and explained that the appellant's arguments were not convincing.

IV. By letter dated 2 July 2012 the appellant filed two sets of claims according to amended auxiliary requests I and II together with arguments in support of patentability. Former auxiliary request II was renumbered as auxiliary request III.

V. During oral proceedings, held on 10 July 2012, the appellant withdrew all requests and filed claims 1 to 14 as a new main request.

Independent claim 1 according to this main request reads as follows:

"1. System for point of care diagnosis and/or analysis of a body fluid of a patient, comprising:
at least one cartridge (2), having:
a sample receiving room (5) for receiving a sample of the body fluid to be diagnosed and/or analyzed,
a diagnosing and/or analyzing arrangement (6) for measuring at least one physiological parameter of the sample,
a first interface (7) for connecting the cartridge (2) to a diagnosis and/or analysis device (3),
at least two handheld diagnosis and/or analysis devices (3), each having:
at least one second interface (8) for connecting one of said cartridges (2) to the handheld device (3),
a measurement arrangement (9) co-operating with the connected cartridge (2) for measuring the parameter and generating measurement data thereof,
complementary fifth and sixth interfaces (16,17) for connecting at least two handheld devices (3) together,
the fifth interface (16) located on top of a respective handheld diagnosis and/or analysis device (3) and the

sixth interface located at the bottom of the respective handheld diagnosis and/or analysis device (3) the fifth and sixth interfaces (16,17) provided for coupling two or more handheld diagnosis and/or analysis devices (3) to form a stack,
at least one third interface (13) for connecting the handheld device (3) to a data processing device (4),
wherein each handheld device represents a standalone device for providing the measurement,
wherein each handheld device comprises an input unit (34) and an output unit (35),
at least one data processing device (4), having:
at least one fourth interface (14) for connecting one of said handheld devices (3) to the data processing device (4),
a data processing unit (15) co-operating with the connected handheld device (3) for further processing the measurement data,
wherein the at least two handheld diagnosis and/or analysis devices (3) are coupled to form a stack and all coupled handheld devices (3) communicate via one third interface (13) with the data processing unit (15) of the data processing device (4), and
wherein the handheld diagnosis and/or analysis devices (3) are configured to automatically provide a master-slave configuration once coupled together and form this master-slave configuration, with the top handheld diagnosis and/or analysis device (3), the fifth interface (16) of which is unconnected forming the master member of the master-slave configuration and with the handheld diagnosis and/or analysis device (3) the fifth interface (16) of which is connected to the sixth interface (17) of another handheld diagnosis and/or

analysis device (3) forming the slave member of the master-slave configuration and wherein the slave members perform the measurement of the plugged in cartridges (2), while other operating units thereof are deactivated and the input output units of the master member provide a human interface for controlling all handheld devices of the stack."

VI. The appellant requested that the appealed decision be set aside and that a patent be granted on the basis of one of claims 1 to 14 submitted as main request at the oral proceedings.

VII. After due deliberation on the basis of the written submissions and the appellant's arguments presented during oral proceedings, the board announced its decision.

Reasons for the Decision

1. Admissibility

The appeal complies with Articles 106 to 108 EPC (see Facts and Submissions, point II above). It is therefore admissible.

2. Amendments - Article 123(2) EPC

The application as originally filed discloses on page 2, line 13 onwards and on page 6, lines 14 to 16 that a handheld device according to the invention is a standalone device for providing measurements and comprises an input and output unit. The corresponding

feature of claim 1 is therefore originally disclosed and the requirements of Article 123(2) EPC are fulfilled.

3. Inventive step - Article 56 EPC 1973

Publication D1 is considered to be the closest prior art on file.

3.1 The board agrees with the analysis of D1 in point 1.1 of the decision under appeal. Hence, D1 does not disclose the following features of claim 1:

a) the complementary fifth and sixth interfaces located on top and at the bottom of each standalone handheld device and which are provided for coupling two or more such devices to form a stack which communicates via one of the third interfaces with the data processing unit of the data processing device, and

b) the coupled handheld devices which form a stack automatically provide a master-slave configuration, with the device having the top interface unconnected forming the master and providing the human interface for controlling all standalone handheld devices, whereas the rest are slave devices which perform the measurements of the plugged-in cartridges, while other operating units thereof are deactivated.

3.2 The underlying objective technical problem of these distinguishing features is considered to be the provision of an improved system comprising a plurality of handheld devices which enables an efficient and safe communication of a plurality of measurement data of

respective standalone handheld devices in order to use the data processing device and its interface capacity in an efficient manner while keeping the flexibility of the standalone handheld devices.

3.3 When looking for a solution to this objective problem the skilled person would also consider the disclosure of D5 which is in the same field of medical devices for diagnosis.

3.4 D5 discloses the forming of a pile, i.e. a stack, of sensor elements 22. Each such sensor element has complementary interfaces 23 and 26 on top and at the bottom which are used to interconnect a plurality of elements which communicate with the data processing unit 21 via a mobile phone 10 and its air interface. D5 does not disclose the use of a separate interface of a sensor element for this communication with the data processing unit (see D5, figure 1 and page 2, line 21 to page 3, line 29). Instead, it is disclosed that a basic unit 21 can be integrated with the mobile phone so that the wireless interface forms a separate interface for communication with a data processing unit (see D5, page 4, lines 6-9).

The skilled person starting from D1 and trying to solve the objective problem on the basis of a standalone handheld device according to D1, which is a PDA providing a human interface (see e.g. figure 3 of D1), would not arrive at the solution of distinguishing feature a), because he would compare the mobile phone 10 in D5 to the PDA in D1 and would therefore not be prompted to form a stack of such mobile phones, since D5 does not disclose the communication of measurement

data of multiple mobile phones to a data processing unit. And even if the skilled person were to compare the sensor elements 22 in D5 (see figure 1), despite not being standalone handheld devices, to the PDA in D1, he would not be prompted to use a separate interface of a single sensor element for communicating measurement results to the data processing unit, since according to D5 there is no such separate interface corresponding to the so-called third interface of the solution according to distinguishing feature a). Since D5 discloses always using the input/output facilities 13 and 14 of the mobile phone 10, the skilled person would consequently not arrive at the particular master-slave configuration solution according to distinguishing feature b). Since none of the sensor elements 22 in D5 provides input/output units, none of them can be a master device according to feature b). Even though there might be an implicit disclosure of a master-slave configuration, because D5 discloses the use of a data-bus 23 for connecting the sensor elements 22 (see e.g. page 3, lines 17-20), there is no motivation for automatic detection of whether a measurement device is in the master or slave mode, and there are no input/output units to be deactivated in the slave mode according to distinguishing feature b).

3.5 The solution according to the distinguishing features of claim 1 is therefore not considered to be rendered obvious by a combination of the teachings of D1 and D5 (Article 56 EPC 1973).

4. None of the further prior-art documents on file discloses complementary interfaces located on top and at the bottom of each standalone handheld device and

provided for coupling two or more such devices to form a stack which communicates via one of the third interfaces with the data processing unit of the data processing device according to distinguishing feature a), or renders such a feature obvious.

5. For the afore-mentioned reasons the board finds that claim 1 according to the main request satisfies the requirements of Article 56 EPC 1973. Since claims 2 to 14 of this request refer to independent claim 1, they also meet the requirements of Article 56 EPC 1973.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to grant a patent on the basis of claims 1 to 14 submitted as main request at the oral proceedings, and of a description and drawings as amended accordingly.

The Registrar: The Chair:

K. Götz A. Ritzka