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**Datasheet for the decision
of 21 February 2014**

Case Number: T 1870/09 - 3.4.01

Application Number: 05817206.5

Publication Number: 1807786

IPC: G06K7/00

Language of the proceedings: EN

Title of invention:

KNOWN LOSS DATA LOGGING

Applicant:

Tyco Fire & Security GmbH

Headword:

Relevant legal provisions:

EPC 1973 Art. 56, 84

EPC Art. 123(2)

Keyword:

Inventive step - main request (no) - auxiliary request (no)

Decisions cited:

T 0641/00

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1870/09 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 21 February 2014

Appellant: Tyco Fire & Security GmbH
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Representative: Hafner, Dieter
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 14 April 2009 refusing European patent application No. 05817206.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: G. Assi
Members: T. Zinke
J. Geschwind

Summary of Facts and Submissions

- I. The appeal filed on 15 June 2009 lies from the decision of the examining division, posted on 14 April 2009, refusing European patent application No. 05 817 206.5 published with publication No. 1 807 786 (WO-A-2006/050463). The appeal fee was paid on the same day. The statement setting out the grounds of appeal was filed on 20 August 2009.
- II. In the decision under appeal, the examining division held that the subject-matter of the pending independent claims 1 and 8 did not fulfil the requirements of Article 54(1), (2) EPC 1973 having regard to document D1 (US-B1-6 275 153).
- III. In the notice of appeal the appellant (applicant) requested that the decision under appeal be set aside and that oral proceedings be held.
- IV. With the statement setting out the grounds of appeal the appellant reiterated its request that the decision under appeal be set aside.

Moreover, the appellant submitted that the claims then on file were both novel and inventive over the cited prior art.

- V. On 30 September 2013 the Board issued a summons to oral proceedings scheduled to take place on 16 December 2013 together with a communication under Article 15(1) RPBA drawing attention to issues to be discussed.

The Board held that the evaluation of novelty of the subject-matter of independent claims 1 and 8 then on file depended on the interpretation of several terms

used in the claims, i.e. "*known loss data*", "*defeated EAS tag*", or "*report*". In this respect, the argumentation of the appellant in the statement setting out the grounds of appeal focused on the aspect that the present application dealt with "*defeated tags*", whereas the prior art on record dealt with "*active tags*". The question thus was, whether this alleged difference clearly resulted from the wording of the claims. Further, the Board explained that replacing writing data into a paper notebook with writing the same data by means of a software running on a computer would not imply an inventive activity. Since the application deals with computer programs, the Board also mentioned that according to T 0641/00 (OJ EPO 2003, 352), "*non-technical*" features cannot support the presence of inventive step.

VI. In response to a letter by the representative of the appellant dated 15 October 2013 requesting to cancel the oral proceedings on 16 December 2013 and to set a new date since the representative had been summonsed to another oral proceedings on the same date, the Board by letter dated 30 October 2013 informed that the oral proceedings were rescheduled to take place on 21 February 2014.

VII. With a letter dated 15 January 2014 the appellant filed a new set of claims 1 to 9 according to a main request and a new set of claims 1 to 7 according to an auxiliary request. The appellant further provided a basis for the claim amendments and provided arguments for novelty and inventive step of the subject-matter of the claims of the main request and the auxiliary request, respectively.

VIII. The oral proceedings were held on 21 February 2014 as scheduled. During oral proceedings the representative of the appellant filed claims 1 and 8 according to a main request and an auxiliary request, respectively, and provided arguments with regard to clarity, sufficiency of disclosure, novelty and inventive step of the subject-matter of the claims of the respective requests. Moreover, the representative postponed the file of dependent claims, should the Board consider that a patent could be granted on the basis of the independent claims of one of the requests.

IX. Claim 1 of the appellant's main request reads as follows:

"A method for collecting information pertaining to missing merchandise articles within a department store area (2) protected by an electronic article surveillance (EAS) system (1), wherein evidence for said missing merchandise articles includes identifying discarded article EAS tags and/or discarded article packaging materials, said method comprising the steps of:

providing a recording unit (14) for collecting data pertaining to said missing merchandise articles, said recording unit having at least a user interface,

recording the missing merchandise article data into said recording unit (14) in response to a predetermined series of prompts displayed on the user interface, the recording unit (14) being connected through a communications network to a data processing unit (18),

providing at least a point-of-sale (POS) station (6) recording POS transaction data associated with

purchases and/or returns of merchandise articles, wherein the POS transaction data includes data identifying a person, who purchased or returned the merchandise articles,

transmitting said missing merchandise data and POS transaction data through the communications network to said data processing unit (18),

correlating in said data processing unit (18) said missing merchandise data and POS transaction data to generate a report based on said data to determine the identity of serial shoplifters."

Claim 8 of the appellant's main request referred to a corresponding system for carrying out the "method according to claims 1 to 7".

- X. Claim 1 of the appellant's auxiliary request reads as follows:

"A method for collecting information pertaining to missing merchandise articles within a department store area (2) protected by an electronic article surveillance (EAS) system (1), wherein evidence for said missing merchandise articles includes identifying discarded article EAS tags and/or discarded article packaging materials, said method comprising the steps of:

providing a recording unit (14) for collecting data pertaining to said missing merchandise articles, said recording unit having at least a user interface, wherein the missing merchandise article data includes at least date, time and location of said identified evidence,

recording the missing merchandise article data into said recording unit (14) in response to a predetermined series of prompts displayed on the user interface, the recording unit (14) being connected through a communications network to a data processing unit (18),

providing at least a point-of-sale (POS) station (6) recording POS transaction data associated with purchases and/or returns of merchandise articles, wherein the POS transaction data includes data identifying a person, who purchased or returned the merchandise articles,

transmitting said missing merchandise data and POS transaction data through the communications network to said data processing unit (18),

correlating in said data processing unit (18) said missing merchandise data and POS transaction data to generate a report based on said data to determine the identity of serial shoplifters."

- XI. Claim 8 of the appellant's auxiliary request referred to a corresponding system for carrying out the "method according to claims 1 to 7".

Reasons for the Decision

1. The appeal is admissible.
2. The Board considered the new sets of claims filed during the oral proceedings as a serious attempt to overcome the Board's objections with regard to clarity (Article 84 EPC 1973) and insufficient disclosure (Article 123(2) EPC) raised during oral proceedings

against the claims as filed with the letter dated 15 January 2014 and, consequently, admitted the requests into the proceedings (Article 13(1) RPBA).

3. Main request

3.1 The Board is satisfied that the independent method and system claims of the main request as filed during oral proceedings fulfill the requirements of clarity (Article 84 EPC 1973) and sufficiency of disclosure (Article 123(2) EPC).

3.2 Article 56 EPC 1973

3.2.1 Since document D3 discloses most of the features claimed in the method claim of the main request, it is considered the closest prior art document.

3.2.2 In detail, document D3 discloses:

- a method for collecting information pertaining to missing merchandise articles within a department store area protected by an electronic article surveillance (EAS) system (c.f. Abstract, Fig. 1), said method comprising the steps of:
- providing a recording unit for collecting data, said recording unit having at least a user interface (c.f. Fig. 1, in particular the event database 46 in remote computer 38, every computer that should communicate with a user having a user interface);
- recording data into said recording unit (c.f. Fig. 1, Fig. 5(b), column 6, line 61 to column 7, line 4);

- the recording unit being connected through a communications network to a data processing unit (c.f. Fig. 1, in particular the comparator 66 and its connection to the event database, description column 8, lines 1 to 6);
- providing at least a point-of-sale (POS) station recording POS transaction data associated with purchases and/or returns of merchandise articles, wherein the POS transaction data includes data identifying a person, who purchased or returned the merchandise articles (c.f. Fig. 1, in particular the POS system 18, column 3, lines 59 to 65 and column 11, lines 28 to 35);
- transmitting said data and POS transaction data through the communications network to said data processing unit (c.f. Fig. 1, in particular the remote computer 38 and the comparator 66, column 6, lines 8 to 11 and lines 39 to 43);
- correlating in said data processing unit said data and POS transaction data to generate a report based on said data to determine the identity of serial shoplifters (c.f. Fig. 1, in particular the discrepancy report, column 8, lines 1 to 64, wherein determining the identity of shoplifters includes determining the identity of serial shoplifters).

3.2.3 Thus, the distinguishing features with regard to document D3 are:

- (a) Evidence for the missing merchandise articles includes identifying discarded article EAS tags and/or discarded article packaging materials;
- (b) The data recorded in the recording unit, transmitted to the data processing unit, correlated with the POS data in the data processing unit and used for generating the report is data pertaining to the missing merchandise articles;
- (c) The data is recorded in the recording unit in response to a predetermined series of prompts displayed on the user interface.

3.2.4 Hence, whereas in document D3 the data is automatically derived from active tags, the data used in the system of claim 1 is derived from discarded tags and/or discarded article packaging material and entered manually into the system.

3.2.5 The arguments of the appellant provided in the statement setting out the grounds of appeal dated 20 August 2009, the letter of 15 January 2014 and during oral proceedings can be summarized as follows:

A major aspect of the subject-matter of claim 1 of the main request lay in the different origin of the data:

- Document D3 used active tags, whereas in the claimed invention discarded tags or non-working tags were used;
- The claimed invention did not record the tag data by passing of an active tag through an interrogator;

- The claimed invention used data originating from multiple sources (c.f. statement setting out the grounds of appeal, page 14, second paragraph).

The different origin of the data implied differences in the data itself:

- The content of the data used in the system of D3 and the present application was different. In the present application the data included information when, where and how an item in a store was stolen, whereas D3 did not disclose this data content. Hence, the recording, correlating and report generating steps had to be implemented differently;
- The different data content also implied different data structures so that a person skilled in the art would need non-obvious technical considerations to adapt the system of D3 in order to arrive at the claimed solution.

The different data also resulted in a different aim to be achieved by the claimed subject-matter, namely preventing future thefts in a shop rather than identifying shop-lifters immediately.

Due to the different aim of the claimed invention and to the technical considerations required by the person skilled in art, the subject-matter of the claimed invention was based on an inventive step.

- 3.2.6 The Board does not consider this argumentation to be convincing.

- 3.2.7 The first distinguishing feature (a) above does not include any technical content at all, but refers to a method for performing a mental act, i.e. identifying discarded EAS tags and/or discarded article packaging materials by shop employees. According to the decision T 0641/00 "*non-technical features*" (i.e. features relating to non-inventions within the meaning of Article 52(2) EPC) " cannot support inventive step (T 0641/00, Headnote and point 4. of the Reasons).
- 3.2.8 With regard to distinguishing feature (b) above, a question to be considered concerns which implications might result in the various method steps from the different origin of the data of the present application as compared to document D3.
- 3.2.9 "Data" as such can be distinguished from other "data" by its content and format. For instance,
- with regard to the content: location data can be distinguished from time data,
 - with regard to the format: "1 p.m." can be distinguished from "13:00".
- 3.2.10 In document D3 it is evident from Fig. 5(b) and the corresponding description (column 6, line 61 to column 7, line 4) that the data in the event database is characterized by serial number, date and time information provided with a certain format. Clearly, the system of document D3 is adapted to record and transmit such data.
- 3.2.11 In claim 1 of the main request the data pertains to missing merchandise articles. In the description (c.f. paragraph [0032]) it is stated that the missing merchandise data may include, inter alia, data concerning "time" and "date", as also disclosed in

document D3. The claim wording, however, neither mentions *"multiple sources"* for the data, nor any particular reference to *"information when, where and how an item in a store was stolen"*. Thus, the very general wording of the feature defining the missing merchandise data does not exclude that such data only consists of, for instance, a particular date and time when the discarded tag was found. This would not result in any difference of the data to be recorded and transmitted with respect to D3.

- 3.2.12 If at all, the difference of the missing merchandise data as compared to the data of document D3 could only lie in the content of the data itself. This may imply a need to adapt the steps of *"correlating the data"* and *"generating a report based on the data"*.

However, this view is not convincing because the expression *"missing merchandise data"* is so broad that it also encompasses data that consists of, for instance, only the date and time when the defeated tag was found.

Date and time informations of two different sources (POS system and interrogator) are already correlated in the system of D3 in order to generate the report (c.f. Fig. 5(c)). Thus, it is not excluded that no adaptation of the algorithms used in document D3 at all is necessary. The only - slight - adaptation that might possibly be conceived is to adapt the time scale used when generating the report, since the system disclosed in D3 seems to rely on a shorter time scale than the alleged invention. Such an adaptation in an algorithm, however, lies in the capabilities of an ordinary skilled person and can not establish inventive activity.

- 3.2.13 The further difference that remains to be considered is the feature (c) of recording the missing merchandise article data into the recording unit in response to a predetermined series of prompts displayed on the user interface.
- 3.2.14 It is well known that data can be input into a computer either automatically (e.g. by analysing sensor data) or manually. If the input is performed manually it is a known option to support the input by series of prompts displayed on the user interface. The person skilled in the art will use the appropriate way of inputting the data based on the given circumstances without using inventive activity as long as no particular considerations with regard to a particular content or format of data is evident. As discussed above, in the present case, the claim wording does not include any such particular content or format of the data. Hence, the replacement of automatic input with manual input supported by a series of prompts is only an obvious alternative.
- 3.2.15 Consequently, after analysing the distinguishing features a) to c) in detail, the objective technical problem starting from document D3 is to adapt the system disclosed in document D3 so that data is handled that is input manually and is derived from discarded tags. This problem is solved according to claim 1 of the main request by adapting the correlating step disclosed in document D3 and by providing a user interface with prompts. These adaptations do not extend beyond the ordinary capabilities of a skilled person and, thus, can not establish an inventive step (Article 56 EPC 1973).

- 3.2.16 It follows that claim 1 of the main request lacks inventive step (Article 56 EPC 1973).
4. Auxiliary request
- 4.1 Independent claim 1 of the auxiliary request only differs from claim 1 of the main request in that the data is further specified as: *"wherein the missing merchandise data includes at least date, time and location of said identified evidence"*.
- 4.2 As already discussed above the system of D3 is already enabled to handle data concerning *"date"* and *"time"*.
- 4.3 Document D3 discloses also (c.f. column 10, lines 37 to 45, column 11, lines 53 to 64) that a plurality of tag interrogators can be used that are placed at different locations. From these passages and the intended functionality, i.e. to control different exits in a shop, D3 already gives a hint to a person skilled in the art at also handling data concerning *"location"*. The person skilled in the art would thus arrive at the subject-matter of claim 1 without using inventive skills.
- 4.4 Consequently, also claim 1 of the auxiliary request lacks an inventive step (Article 56 EPC 1973).
5. In conclusion, neither the main request nor the auxiliary request is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



R. Schumacher

G. Assi

Decision electronically authenticated