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Datasheet for the decision of 30 November 2016

Case Number: T 1770/11 - 3.4.01

Application Number: 07003851.8

Publication Number: 1793325

IPC: G06K7/00, G06K19/07

Language of the proceedings: EN

Title of invention:
Multi-mode identification system

Applicant:
Avid Identification Systems, Inc.

Headword:

Relevant legal provisions:
EPC 1973 Art. 84
EPC R. 43(2)

Keyword:
Claims - clarity (no)

Decisions cited:

Catchword:

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Case Number: T 1770/11 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 30 November 2016

Appellant: (Applicant)	Avid Identification Systems, Inc. 3185 Hamner Avenue Norco, CA 92860 (US)
Representative:	Fiener, Josef Patentanw. J. Fiener et col. P.O. Box 12 49 87712 Mindelheim (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 10 March 2011 refusing European patent application No. 07003851.8 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 11 May 2011, lies from the decision of the examining division, posted on 10 March 2011, refusing European patent application No. 07 003 851.8, published with publication No. 1 793 325. This European patent application was filed as a divisional application of the earlier European patent application No. 93 907 341.7 (publication No. EP 0 688 454). The appeal fee was paid on the same date. The statement setting out the grounds of appeal was filed on 14 July 2011.

II. In its decision the examining division refused the application since the claims of the sole pending request did not meet the requirements of Article 84 EPC 1973 and Rule 43(2) EPC.

III. With the appeal the appellant (applicant) requested that the decision be *"reversed"*. With the statement setting out the grounds of appeal, the appellant provided arguments with regard to the raised objections and commented on novelty of the claims of the sole request on file. No amendments to the claims as pending before the examining division were made. Auxiliary, oral proceedings were requested.

IV. By summons of 12 September 2016, the appellant was summonsed to oral proceedings due to take place on 30 November 2016. A communication under Article 15(1) RPBA was issued on the same date drawing attention to the issues to be discussed during oral proceedings. In particular, the Board pointed out that it interprets the wording *"reverse the decision"*, used in the appeal and in the statement setting out the grounds of appeal, as meaning that the appellant requested to set aside

the decision of the examining division and to grant a patent on the basis of the claims according to the sole request underlying the decision under appeal, i.e. the claims of the original patent application. Further, the Board provided its preliminary assessment with regard to clarity and novelty.

V. The appellant did not provide any comments to the Board's communication.

VI. With a letter dated 24 November 2016, the representative informed the Board that *"we'll not attend to oral proceedings"*.

VII. The oral proceedings took place as scheduled in the absence of the appellant.

VIII. The independent claims of the sole request read as follows (emphasis added by the Board in order to identify the differences between the claims in the same category):

"1. An electronic identification reader (100) capable of operating in a plurality of modes, said modes being characterized by mode control data, said reader (100) comprising:
a means (110) for generating a reversing magnetic field (10);
a means (142) for starting said generating means (110);
a means (170) for stopping said generating means (110);
a means (170) for obtaining a measure of the time-dependent absorption of power from said magnetic field (10) by an electronic identification tag (200), said power absorption measure representing information being communicated by said tag (200); and

a means (170) for extracting said information from said power absorption measure, said information extracting means (170) being capable of operating in a plurality of information extracting modes, each of said information extracting modes being based on a specific functional relationship between said information and said time-dependent absorption of power by said tag (200), said information extracting modes being characterized by said mode control data."

"*2. An electronic identification reader (100) capable of operating in a plurality of modes, said modes being characterized by mode control data, said reader (100) comprising:*
a means (110) for generating a reversing magnetic field (10);
a means (142) for starting said generating means (110);
a means (170) for stopping said generating means (110);
a means (170) for obtaining a measure of magnetic field variations brought about by an electronic identification tag (200) either before of after said generating means is stopped, said magnetic field variation measure representing information being communicated by said tag (200); and
a means (170) for extracting said information from said magnetic field variation measure, said information extracting means (170) being capable of operating in a plurality of information extracting modes, each of said information extracting modes being based on a specific functional relationship between said information and said time-dependent magnetic field variation brought about by said tag (200), said information extracting modes being characterized by said mode control data."

"8. A method of receiving information that is communicated by the varying absorption of power from a

reversing magnetic field (10) by a source of uncertain location, said varying absorption of power being functionally related to the information being communicated, said functional relationship being any one of a plurality of functional relationships, said method comprising the steps of:
generating a reversing magnetic field (10) in a region believed to be the location of said communication source;
waiting for a predetermined time period, said predetermined time period being the time required for the transient associated with turning on said reversing magnetic field (10) to decrease to a level where said varying absorption of power from said reversing magnetic field (10) is distinguishable from said transient;
obtaining a measure of the power absorbed, if any, from said reversing magnetic field (10) as a function of time;
utilizing the plurality of said functional relationships that may exist between said varying absorbed power and said information being communicated to determine from said power absorption measure as a function of time whether information is being communicated, and if so, the functional relationship being employed;
omitting remaining steps and repeating method in a different location if information is not being communicated; otherwise,
extracting information from said power absorption measure as a function of time utilizing said functional relationship being employed."

"9. A method of receiving information that is communicated by the varying of a magnetic field (10) by a source of uncertain location, said variation in

magnetic field (10) being functionally related to the information being communicated, said functional relationship being any one of a plurality of functional relationships, said method comprising the steps of:
generating a reversing magnetic field (10) in a region believed to be the location of said communication source;
waiting for a predetermined time period, said predetermined time period being the time required for the transient associated with turning on said reversing magnetic field (10) to decrease to a level where said magnetic field variation is distinguishable from said transient;
obtaining a measure of the magnetic field variation as a function of time;
utilizing the plurality of said functional relationships that may exist between said magnetic field variation and said information being communicated to determine from said magnetic field variation measure as a function of time whether information is being communicated, and if so, the functional relationship being employed;
omitting remaining steps and repeating method in a different location if information is not being communicated; otherwise,
extracting information from said magnetic field variation measure as a function of time utilizing said functional relationship being employed."

"10. A method of receiving information that is communicated by the varying of a magnetic field (10) by a source of uncertain location, said variation in magnetic field (10) being functionally related to the information being communicated, said functional relationship being any one of a plurality of functional relationships, said method comprising the steps of:

generating a reversing magnetic field (10) in a region believed to be the location of said communication source for a first predetermined period of time;
waiting for a second predetermined time period after said magnetic field generation stops, said second predetermined time period being the time required for the transient associated with turning off said reversing magnetic field (10) to decrease to a level where said magnetic field variation is distinguishable from said transient;
obtaining a measure of the magnetic field variation as a function of time;
utilizing the plurality of said functional relationships that may exist between said magnetic field variation and said information being communicated to determine from said magnetic field variation measure as a function of time whether information is being communicated, and if so, the functional relationship being employed;
omitting remaining steps and repeating method in a different location if information is not being communicated; otherwise,
extracting information from said magnetic field variation measure as a function of time utilizing said functional relationship being employed."

(In claim 10 the differences to claim 9 are emphasized by the Board.)

Reasons for the Decision

1. The appeal is admissible.

2. Article 84 EPC 1973 - Clarity

2.1 According to the examining division (see decision under appeal, point 1.2), claims 3-7 depended on claim 1. However, claim 1 concerned a reader, whereas claims 3-7 related to a tag. Therefore, it was not clear how claims 3-7 would further characterise the reader of claim 1.

2.2 According to the appellant (see grounds of appeal, paragraph bridging pages 1 and 2), the claims were in close technical relationship. In particular, claims 3-7 related to a reader as defined in claims 1 or 2 being coupled to a tag. This was a case of interrelated products (Rule 43(2)(a) EPC).

2.3 The Board, however, holds that claims 3-7 should have been formulated as claims for a system comprising a reader and a tag. The present formulation of claims 3-7 entails a lack of clarity in that it is not apparent whether they refer to a tag per se, to be coupled to a reader, or to a system comprising a reader and tag.

2.4 Consequently, the subject-matter of dependent claims 3 is ambiguous. Hence, the requirement of clarity (Article 84 EPC 1973) is not met.

3. Rule 43(2) EPC - Number of independent claims

3.1 According to Rule 43(2) EPC "*a European patent application may contain more than one independent claim in the same category (product, process, apparatus or use) only if the subject-matter of the application involves one of the following:*
(a) a plurality of interrelated products,
(b) different uses of a product or apparatus,

(c) alternative solutions to a particular problem, where it is inappropriate to cover these alternatives by a single claim."

3.2 The examining division considered (see decision under appeal, point 1.1) that none of the exceptions set out in said paragraphs (a), (b) and (c) applied.

3.3 According to the appellant (see grounds of appeal, page 2, second paragraph), independent device claims 1 and 2 concerning an *"electronic identification reader"* and independent method claims 8, 9 and 10 relating to *"a method of receiving information"* were acceptable according to Rule 43(2)(c) EPC since these claims were *"alternative solutions to a particular* problem *(being defined here on page 6 of the original specification)"*.

3.4 In the Board's view, device claims 1 and 2 differ in that they claim either *"a measure of the time-dependent absorption of power from said magnetic field"* (claim 1) or *"a measure of magnetic field variations brought about by an electronic identification tag"* (claim 2), these measures being respectively used to extract information from a tag.
These two features, however, have overlapping scopes, since a *"time-dependent absorption of power from a magnetic field"* entails *"a magnetic field variation brought about by an electronic identification tag"*.
Hence, they do not qualify as *"alternative solutions"* according to Rule 43(2)(c) EPC.

A corresponding argumentation applies to independent method claims 8, 9 and 10 mutatis mutandis.

3.5 Therefore, the exception of Rule 43(2)(c) EPC does not justify the number of independent claims of the present

application. This leads to the fact the requirement of conciseness (Article 84 EPC 1973) with regard to the number of claims is not met.

4. Therefore, the sole request on file is not allowable.

5. Right to be heard (Article 113(1) EPC)

The reasons for the present decision are all mentioned in the Board's communication of 12 September 2016. The appellant, however, failed to make any submissions in reply. The Board has no reason to take another view.

Order

For these reasons it is decided that:

1. The appeal is dismissed.

The Registrar: The Chairman:

R. Schumacher G. Assi

Decision electronically authenticated