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**Datasheet for the decision
of 8 June 2017**

Case Number: T 0578/12 - 3.4.03

Application Number: 06790328.6

Publication Number: 1941468

IPC: G07F7/08, G06Q50/00, G06Q90/00

Language of the proceedings: EN

Title of invention:
DISPENSING OF RESTRICTED GOODS

Applicant:
Bluepoint International Pty Ltd.

Headword:

Relevant legal provisions:
EPC 1973 Art. 56

Keyword:
Inventive step - all requests (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0578/12 - 3.4.03

**D E C I S I O N
of Technical Board of Appeal 3.4.03
of 8 June 2017**

Appellant: Bluepoint International Pty Ltd.
(Applicant) Level 11
459 Collins Street
Melbourne, VIC 3000 (AU)

Representative: Sanderson & Co.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 27 October 2011
refusing European patent application No.
06790328.6 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman G. Eliasson
Members: M. Papastefanou
T. Bokor

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division refusing European patent application No. 06 790 328.6 (published as WO 2007/041767) on the ground that claim 1 of the sole request lacked novelty within the meaning of Articles 54(1) and (2) EPC.
- II. In its decision, the Examining Division made reference to the following documents:
D1: AU 2004101011 A4
D3: US 6735497 B
- III. The applicant (appellant) appealed against this decision and with the statement of grounds of appeal submitted claims of a Main Request, as well of First, Second, Fourth Auxiliary requests and made reference to a Third Auxiliary request for which no claims were filed.
- IV. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), which was annexed to the summons to oral proceedings, the Board communicated its preliminary non-binding opinion.

The Board introduced in the proceedings of its own motion the document
D6: US 6529801 B1
which was cited and commented in the description of the present application.

According to the Board's preliminary opinion, the subject matter of all independent claims of all three requests was obvious with respect to the combination of

documents D1 and D6. In addition, objections under Articles 84 EPC 1973 and 123(2) EPC were raised.

V. In a letter dated 8 May 2017 the appellant argued against the objections raised by the Board and submitted claims of a Main request and of First to Eleventh Auxiliary requests. The claims of the Main request and those of the First, Second and Fourth Auxiliary requests corresponded to those filed with the statement of grounds of appeal.

VI. Oral proceedings were held before the board on 8 June 2017.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the Main request filed with the letter dated 8 May 2017 or, as an auxiliary measure, of one of the First to Eleventh Auxiliary requests filed also with the same letter.

VII. Claim 1 of the **Main request** reads as follows:

A method of dispensing restricted products from an authorized vendor to an approved purchaser which includes the steps of:

- a) providing a dispenser containing an inventory (20) of restricted goods;*
- b) providing an audio communication link (48, 54) from the dispenser to the authorized vendor;*
- c) providing means in the dispenser to enable the vendor to verify the purchaser's status as an approved purchaser;*
- d) providing an inventory system that includes product storage in rows and columns and a product*

- identification system that identifies the location of each product by its row and column;*
- e) providing a product selection device that verifies that the product selected is correct and holds and carries the product from its storage location to one or more of a printing location, viewing location and issue tray (60) all located within the dispenser;*
 - f) providing visual viewing means for the vendor to view the product (44A) before it is placed in the issue tray (60);*
 - g) providing a payment transaction system (43) in the dispenser to verify payment for the product;*
 - h) maintaining locked the issue tray until the vendor releases the product to the purchaser; and*
 - i) the dispenser including a reject system (62, 63, 65 to 68 and 70) that securely removes the product (44A) to a reject hopper (70) at any time after the product is held by the product selection device but prior to the vendor releasing the product from the issue tray (60).*

VIII. Claim 1 of the **First Auxiliary request** reads as follows:

A method of dispensing restricted products from an authorized vendor to an approved purchaser which includes the steps of:

- a) providing a dispenser containing an inventory (20) of restricted goods;*
- b) providing an audio communication link (48, 54) from the dispenser to the authorized vendor;*
- c) providing means in the dispenser to enable the vendor to verify the purchaser's status as an approved purchaser;*
- d) providing an inventory system that includes product storage in rows and columns and providing a product*

- identification system that identifies each product by its row and column location;*
- e) providing a viewing location and a lockable issue tray (60), and optionally a printing location, all within the dispenser;*
 - f) providing a product selection device that picks a product from its row and column location and then verifies that the product selected is correct, the product selection device then holding and carrying the product optionally to the printing location, and then to the viewing location and to the issue tray (60);*
 - g) providing visual viewing means for the vendor to view the product (44A) when at the viewing location and before it is placed in the issue tray (60);*
 - h) providing a payment transaction system (43) in the dispenser to verify payment for the product;*
 - i) maintaining locked the issue tray until the vendor releases the product to the purchaser; and*
 - j) the dispenser including a reject system (62, 63, 65 to 68 and 70) that securely moves the product (44A) to a reject hopper (70) if the verification of a selected product by the product selection device fails or at any time after the product is held by the product selection device but prior to the vendor releasing the product from the issue tray (60).*

IX. Claim 1 of the **Second Auxiliary request** reads as follows:

A method of dispensing restricted products from an authorized vendor to an approved purchaser which includes the steps of:

- a) providing a dispenser containing an inventory (20) of restricted goods;*
- b) providing an audio communication link (48, 54) from the dispenser to the authorized vendor;*

- c) *providing means in the dispenser to enable the vendor to verify the purchaser's status as an approved purchaser;*
- d) *providing an inventory system that includes product storage in rows and columns and providing a product identification system that identifies each product by its row and column location;*
- e) *providing a viewing location and a lockable issue tray (60), and optionally a printing location, all within the dispenser;*
- f) *providing a product selection device including a bar code reader;*
- g) *picking a product from its row and column location by the product selection device and then verifying that the product selected is correct by using the bar code reader to read the bar code on the product and comparing the read bar code with the expected code, and if not as expected then directing the selected product to a reject bin;*
- h) *if not rejected, using the product selection device to hold and carry the product to the printing location, the viewing location and then to the issue tray (60);*
- i) *providing visual viewing means for the vendor to view the product (44A) when at the viewing location and before it is placed in the issue tray (60);*
- j) *providing a payment transaction system (43) in the dispenser to verify payment for the product;*
- k) *maintaining locked the issue tray until the vendor releases the product to the purchaser; and*
- l) *securely rejecting the product to a reject hopper (70) at any time when the product is held by the product selection device or when the product is in the issue tray (60) in the event that the vendor is not prepared to release the product from the issue tray (60).*

X. Claim 1 of the **Third Auxiliary request** reads as follows:

A dispenser for dispensing restricted goods by an authorized vendor to an approved purchaser which includes:

- a) *a cabinet containing an inventory storage system(20), a purchaser transaction module (40), a reject system (62, 63, 65 to 68 and 70) and a control system;*
- b) *said inventory storage system (20) includes product storage (23) in rows and columns;*
- c) *said purchaser transaction module (40) including an audio communication link (48, 54) from the dispenser to the authorized vendor, a payment transaction system (43) in the dispenser to verify payment for the product and an issue tray (60) in the dispenser that is locked until the vendor releases a product (44A) to the purchaser;*
- d) *said reject system being arranged to securely remove product (44A) to a reject hopper at any time after the product is held by the product selection device but prior to the vendor releasing the product from the issue tray (60); and*
- e) *said control system including:*
 - (i) *an identification device to enable the vendor to verify the purchaser's status as an approved purchaser;*
 - (ii) *a product identification system that stores the location of its product by its row and column;*
 - (iii) *a product selection device that enables verification that the product (44A) selected is correct and holds and carries the product from its storage location (23) to one or more of a printing location, viewing location and issue tray (60) all located within the dispenser;*

- (iv) a reject control to enable the vendor to actuate the reject system; and
- (v) a release control to unlock the issue tray.

XI. Claim 1 of the **Fourth Auxiliary request** reads as follows:

A method of dispensing restricted products from an authorized vendor to an approved purchaser which includes the steps of:

- a) providing a plurality of dispensing terminals each containing an inventory (20) of restricted goods;*
- b) providing a management server having a database of authorized vendors, approved purchasers, purchaser locations and dispensing terminals, the management server being programmed to assist communication between a purchaser and a dispensing terminal;*
- c) providing an audio communication link (48, 54) from a dispensing terminal and an authorized vendor as determined by the management server;*
- d) providing means in the each dispensing terminal to enable the vendor to verify the purchaser's status as an approved purchaser;*
- e) providing an inventory system that includes product storage in rows and columns and providing a product identification system that identifies each product by its row and column location;*
- f) providing a viewing location and a lockable issue tray (60) and a printing location, all within each dispensing terminal;*
- g) providing a product selection device including a bar code reader;*
- h) picking a product from its row and column location by the product selection device and then verifying that the product selected is correct by using the bar code reader to read the bar code on the product and comparing the read bar code with the expected code, and*

- if not as expected then directing the selected product to a reject bin;*
- i) if not rejected, using the product selection device to hold and carry the product to the printing location, the viewing location and then to the issue tray (60);*
 - j) providing visual viewing means for the vendor to view the product (44A) when at the viewing location and before it is placed in the issue tray (60);*
 - k) providing a payment transaction system (43) in the dispensing terminal to verify payment for the product;*
 - l) maintaining locked the issue tray until the vendor releases the product to the purchaser; and*
 - m) securely rejecting the product to a reject hopper (70) at any time when the product is held by the product selection device or when the product is in the issue tray (60) in the event that the vendor is not prepared to release the product from the issue tray (60).*

XII. Claim 1 of the **Fifth Auxiliary request** reads as follows:

A method of dispensing restricted products from an authorized vendor to an approved purchaser which includes the steps of:

- a) providing a dispenser containing an inventory (20) of restricted goods;*
- b) providing an audio communication link (48, 54) from the dispenser to the authorized vendor;*
- c) providing means in the dispenser to enable the vendor to verify the purchaser's status as an approved purchaser;*
- d) providing an inventory system that includes product storage in rows and columns and providing a product identification system that identifies each product by its row and column location;*

- e) *providing a viewing location and a lockable issue tray (60), and optionally a printing location, all within the dispenser;*
- f) *providing a product selection device that picks a product from its row and column location and then verifies that the product selected is correct, the product selection device then holding and carrying the product optionally to the printing location, and then to the viewing location and then to the reject bin or delivering it to the issue tray (60);*
- g) *providing visual viewing means for the vendor to view the product (44A) when at the viewing location and before it is placed in the issue tray (60);*
- h) *providing a payment transaction system (43) in the dispenser to verify payment for the product;*
- i) *maintaining locked the issue tray until the vendor releases the product to the purchaser; and*
- j) *the dispenser including a reject system (62, 63, 65 to 68 and 70) that securely moves the product (44A) to a reject hopper (70) from the product selection device or from the issue tray if the verification of a selected product by the product selection device fails or at any time after the product is held by the product selection device but prior to the vendor releasing the product from the issue tray (60).*

XIII. Claim 1 of the **Sixth Auxiliary request** reads as follows:

A method of dispensing restricted products from an authorized vendor to an approved purchaser which includes the steps of:

- a) *providing a dispenser containing an inventory (20) of restricted goods;*
- b) *providing an audio communication link (48, 54) from the dispenser to the authorized vendor;*

- c) *providing means in the dispenser to enable the vendor to verify the purchaser's status as an approved purchaser;*
- d) *providing an inventory system that includes product storage in rows and columns and a product identification system that identifies the location of each product by its row and column;*
- e) *providing a product selection device that verifies that the product selected is correct and holds and carries the product from its storage location to one or more of a printing location, a viewing location and via a chute (65) to an issue tray (60) all located within the dispenser;*
- f) *providing visual viewing means for the vendor to view the product (44A) before it is placed in the issue tray (60);*
- g) *providing a payment transaction system (43) in the dispenser to verify payment for the product;*
- h) *maintaining locked the issue tray until the vendor releases the product to the purchaser; and*
- i) *the dispenser including a reject system (62, 63, 65 to 68 and 70) arranged to securely remove the product (44A) to a reject hopper (70) when actuated at a time after the product is held by the product selection device but prior to the vendor releasing the product from the issue tray (60).*

XIV. Claim 1 of the **Seventh Auxiliary request** reads as follows:

A method of dispensing restricted products from an authorized vendor to an approved purchaser which includes the steps of:

- a) *providing a dispenser containing an inventory (20) of restricted goods;*
- b) *providing an audio communication link (48, 54) from the dispenser to the authorized vendor;*

- c) *providing means in the dispenser to enable the vendor to verify the purchaser's status as an approved purchaser;*
- d) *providing an inventory system that includes product storage in rows and columns and providing a product identification system that identifies the location of each product by its row and column;*
- e) *providing a viewing location and a lockable issue tray (60), and optionally a printing location, all within the dispenser;*
- f) *providing a product selection device that picks a product from its row and column location and then verifies that the product selected is correct, the product selection device then holding and carrying the product optionally to the printing location, and then to the viewing location and via a chute to the issue tray (60);*
- g) *providing visual viewing means for the vendor to view the product (44A) when at the viewing location and before it is placed in the issue tray (60);*
- h) *providing a payment transaction system (43) in the dispenser to verify payment for the product;*
- i) *maintaining locked the issue tray until the vendor releases the product to the purchaser; and*
- j) *the dispenser including a reject system (62, 63, 65 to 68 and 70) arranged to securely move the product (44A) to a reject hopper (70) if the verification of a selected product by the product selection device fails or when actuated at a time after the product is held by the product selection device but prior to the vendor releasing the product from the issue tray (60).*

XV. Claim 1 of the **Eighth Auxiliary request** reads as follows:

A method of dispensing restricted products from an authorized vendor to an approved purchaser which includes the steps of:

- a) providing a dispenser containing an inventory (20) of restricted goods;*
- b) providing an audio communication link (48, 54) from the dispenser to the authorized vendor;*
- c) providing means in the dispenser to enable the vendor to verify the purchaser's status as an approved purchaser;*
- d) providing an inventory system that includes product storage in rows and columns and providing a product identification system that identifies the location of each product by its row and column;*
- e) providing a viewing location and a lockable issue tray (60), and optionally a printing location, all within the dispenser;*
- f) providing a product selection device including a bar code reader;*
- g) picking a product from its row and column location by the product selection device and then verifying that the product selected is correct by using the bar code reader to read the bar code on the product and comparing the read bar code with the expected code, and if not as expected then directing the selected product to a reject bin;*
- h) if not rejected, using the product selection device to hold and carry the product to the printing location, the viewing location and then via a chute (65) to the issue tray (60);*
- i) providing visual viewing means for the vendor to view the product (44A) when at the viewing location and before it is placed in the issue tray (60);*
- j) providing a payment transaction system (43) in the dispenser to verify payment for the product;*

- k) *maintaining locked the issue tray until the vendor releases the product to the purchaser; and*
- l) *securely rejecting the product to a reject hopper (70) at a time when the product is held by the product selection device or when the product is in the issue tray (60) in the event that the vendor is not prepared to release the product from the issue tray (60).*

XVI. Claim 1 of the **Ninth Auxiliary request** reads as follows:

A dispenser for dispensing restricted goods by an authorized vendor to an approved purchaser which includes:

- a) *a cabinet containing an inventory storage system(20), a purchaser transaction module (40), a reject system (62, 63, 65 to 68 and 70) and a control system;*
- b) *said inventory storage system (20) includes product storage (23) in rows and columns;*
- c) *said purchaser transaction module (40) including an audio communication link (48, 54) from the dispenser to the authorized vendor, a payment transaction system (43) in the dispenser to verify payment for the product and an issue tray (60) in the dispenser that is locked until the vendor releases a product (44A) to the purchaser;*
- d) *said reject system being arranged to securely remove product (44A) to a reject hopper (70) when actuated at a time after the product is held by the product selection device but prior to the vendor releasing the product from the issue tray (60); and*
- e) *said control system including:*
 - (i) *an identification device to enable the vendor to verify the purchaser's status as an approved purchaser;*

- (ii) a product identification system that stores the location of its product by its row and column;
- (iii) a product selection device that enables verification that the product (44A) selected is correct and holds and carries the product from its storage location (23) to one or more of a printing location, viewing location and via a chute (65) to the issue tray (60) all located within the dispenser;
- (iv) a reject control to enable the vendor to actuate the reject system; and
- (v) a release control to unlock the issue tray.

XVII. Claim 1 of the **Tenth Auxiliary request** reads as follows:

A method of dispensing restricted products from an authorized vendor to an approved purchaser which includes the steps of:

- a) *providing a plurality of dispensing terminals each containing an inventory (20) of restricted goods;*
- b) *providing a management server having a database of authorized vendors, approved purchasers, purchaser locations and dispensing terminals, the management server being programmed to assist communication between a purchaser and a dispensing terminal;*
- c) *providing an audio communication link (48, 54) from a dispensing terminal and an authorized vendor as determined by the management server;*
- d) *providing means in the each dispensing terminal to enable the vendor to verify the purchaser's status as an approved purchaser;*
- e) *providing an inventory system that includes product storage in rows and columns and providing a product*

- identification system that identifies the location of each product by its row and column;*
- f) providing a viewing location and a lockable issue tray (60) and a printing location, all within the each dispensing terminal;*
 - g) providing a product selection device including a bar code reader;*
 - h) picking a product from its row and column location by the product selection device and then verifying that the product selected is correct by using the bar code reader to read the bar code on the product and comparing the read bar code with the expected code, and if not as expected then directing the selected product to a reject bin;*
 - i) if not rejected, using the product selection device to hold and carry the product to the printing location, the viewing location and then via a chute (65) to the issue tray (60);*
 - j) providing visual viewing means for the vendor to view the product (44A) when at the viewing location and before it is placed in the issue tray (60);*
 - k) providing a payment transaction system (43) in the dispensing terminal to verify payment for the product;*
 - l) maintaining locked the issue tray until the vendor releases the product to the purchaser; and*
 - m) securely rejecting the product to a reject hopper (70) at a time when the product is held by the product selection device or when the product is in the issue tray (60) in the event that the vendor is not prepared to release the product from the issue tray (60).*

XVIII. Claim 1 of the **Eleventh Auxiliary request** reads as follows:

A method of dispensing restricted products from an authorized vendor to an approved purchaser which includes the steps of:

- a) providing a dispenser containing an inventory (20) of restricted goods;
- b) providing an audio communication link (48, 54) from the dispenser to the authorized vendor;
- c) providing means in the dispenser to enable the vendor to verify the purchaser's status as an approved purchaser;
- d) providing an inventory system that includes product storage in rows and columns and providing a product identification system that identifies the location of each product by its row and column;
- e) providing a viewing location and a lockable issue tray (60), and optionally a printing location, all within the dispenser;
- f) providing a product selection device that picks a product from its row and column location and then verifies that the product selected is correct, the product selection device then holding and carrying the product optionally to the printing location, and then to the viewing location and then to the reject bin or delivering via a chute (65) to the issue tray (60);
- g) providing visual viewing means for the vendor to view the product (44A) when at the viewing location and before it is placed in the issue tray (60);
- h) providing a payment transaction system (43) in the dispenser to verify payment for the product;
- i) maintaining locked the issue tray until the vendor releases the product to the purchaser; and
- j) the dispenser including a reject system (62, 63, 65 to 68 and 70) arranged to securely move the product (44A) to a reject hopper (70) from the product selection device or from the issue tray if the verification of a selected product by the product selection device fails or when actuated at a time after the product is held by the product selection device but

prior to the vendor releasing the product from the issue tray (60).

Reasons for the Decision

1. The appeal is admissible.
2. Main Request
 - 2.1 The Main request corresponds to the request that formed the basis of the appealed decision. The Examining Division found that claim 1 of the Main request was not new in view of prior art document D1, an Australian patent application by the appellant.

Regarding feature d) of claim 1, the examining division stated that this feature was implicitly disclosed in D1 because every pharmaceutical to be dispensed had to have a predetermined position so that the desired pharmaceutical could be remotely dispensed, otherwise D1 would not operate. Even if it were not implicitly disclosed in D1, this feature was considered to be known in the state of the art as exemplified by D3.

- 2.2 The appellant contested the findings of the examining division in the statement of the grounds of appeal. Its main argument was that document D1 had no drawings nor any description of a detailed embodiment of any dispensing machine. Therefore, it could not be regarded as an enabling disclosure but rather as the presentation of a concept of remote dispensing and, as such, it was not suitable as prior art at all.
- 2.3 The Board notes that claim 1 of the Main request defines a method of dispensing restricted products from an authorised vendor to an approved purchaser. The

features of the claimed method are method steps and there is no detailed definition of any technical features of a dispenser in the claim. Any technical features of the dispenser used (provided) in the claimed method are defined by their function(s). D1 describes also a method of dispensing restricted products from an authorised vendor to an approved purchaser which comprises several steps. The use of a dispenser is also part of the method described in D1 and any features of the dispenser used in this method are also defined by their function(s). The fact that D1 does not contain any figures does not hinder the skilled person from understanding the described method or from carrying it out.

2.4 D1 discloses a method for dispensing pharmaceuticals upon production of a prescription by the purchaser (page 6, lines 6-8) providing a dispensing machine containing a stock of prescribed pharmaceuticals (page 6, lines 19-20) - i.e. restricted goods in the sense of claim 1 - with an audio communication link from the dispensing machine to a pharmacist (page 6, lines 30-32) and means for the pharmacist to verify whether the purchaser is to be approved or not (page 7, line 28 - page 8, line 2). The dispensing machine is also provided with means for the pharmacist to view the pharmaceutical package before it is dispensed to the client (page 8, lines 20-22) and a payment transaction system to verify payment for the package by the purchaser (page 8, lines 4-6). D1, hence, discloses features a), b), c), f) and g) of claim 1.

2.5 Regarding the product selection device (feature e) of claim 1), in D1 it is disclosed that in the dispensing machine a stock of pharmaceutical products is stored (page 6, lines 19-20). When the pharmacist/operator

gives the instruction for a pharmaceutical to be dispensed, a label is printed and affixed on the product (or information is directly printed on the product - page 8, lines 4-10). The pharmacist then inspects an image of the product to ensure that the details on it are correctly printed (page 8, lines 20-22). This is done using a camera (page 6, line 30 - page 7, line 6). Information printed on the product before it is placed in the machine is read by a bar code reader and is used to verify that the selected product is the correct product and no stocking error has occurred (page 8, lines 24-30). If the verification by the pharmacist is positive and there has not been any stocking error, the product is ready to be dispensed to the user. Otherwise, it is retained in a reject area (page 9, lines 1-3). This series of steps implies that the product is taken out of storage, carried to a printer/label affixing device, through a camera and a bar code reader to a reject area or to a dispensing area. This series of actions must be carried out by a system/device that would select the product, take it out of storage, hold it and carry it to a printing/label affixing area (station), to an area where the pharmacist can view it and verify the correctness of the printed information (viewing station) and to a dispensing area (issue tray). D1 discloses, hence, that the dispensing machine used in the described method comprises a product selection device corresponding to the product selection device of feature e) of claim 1.

2.6 With respect to the collection/issue tray, the only information claim 1 provides is that it is maintained locked until the vendor releases the product to the purchaser (feature h). In D1, it is stated that the product is released to the purchaser only after the

pharmacist (i. e. the vendor) operates the dispensing machine accordingly (page 9, lines 10-11). Although there is no specific mention of a collection/issue tray, the dispenser of D1 must comprise a part where the product is placed in order to be released to the purchaser after the vendor provides the corresponding instruction. Feature h) is therefore also disclosed in D1, even if implicitly.

2.7 The dispenser in D1 has an area for rejected packages in which packages are retained when the vendor determines that the label details printed are not correct or if there has been a stocking error (page 9, lines 1-3). In addition, the product(s) is (are) not released to the purchaser unless the vendor actively releases them, i. e. operates the dispensing machine to release them (page 9, lines 5-11). This indicates that the vendor has the choice not to release the package to the purchaser even when the other verification checks are positive. For the implementation of this function, there must be a reject system, i. e. a way for the package to be removed from the issue/collection tray to the area for rejected packages. It would not make sense to leave the package in the issue/collection tray if the vendor decides in the end not to release it to the purchaser.

2.7.1 During the oral proceedings, the appellant contested the Board's conclusion regarding the reject system. According to the appellant, the information provided in D1 indicated merely that the pharmacist had the choice not to dispense the package to the purchaser at the end of the dispensing sequence. This was distinct from the claimed feature where it was clearly defined that the product is removed from the issue tray to the reject bin. There was no information in D1 of what happened to

the non-dispensed package. It might well be that it remained in the issue tray and had to be removed manually by the pharmacist (or another person) before the dispenser would be in a state to operate again. Since neither D3 nor D6 contained a similar feature, only with hindsight would it be possible to reach the conclusion that in the dispenser of D1 the non-dispensed product would be removed to the area for reject packages.

2.7.2 The Board is not convinced by this argument of the appellant. D1 describes a method of remote dispensing of packages which contain prescribed or pharmacy only pharmaceuticals (page 6, lines 19-20). This implies that access to such pharmaceuticals must be strictly controlled. Indeed, the verification of whether the purchaser is authorised to receive such packages is part of the described method (page 7, line 28 - page 8, line 2). Furthermore, the concept of remote dispensing implies that the pharmacist/vendor is not located near the dispensing machine. As it is described in lines 27-30 of page 5 and in lines 16-17 of page 6, the system comprises a distributed network of dispensing machines which are in data communication with a control centre that is staffed by qualified pharmacists. Following the appellant's argument, and accepting that the non-dispensed package of pharmaceuticals would remain in the issue tray of the dispenser at the end of an aborted dispensing sequence, this would result either in the dispenser being blocked and out of operation until the pharmacist (or another authorised person) removes manually the package from the issue tray, or in the following purchaser taking the non-dispensed package of the previous transaction with his/her own package(s). The former result goes against the concept of having a remote dispensing machine since

every time the dispensing sequence is aborted after the product has arrived at the issue tray it would be out of service until someone goes to the dispensing machine and removes the product manually. The pharmacist (or the authorised person) would thus have to be located near the dispensing machine in order to ensure its normal operation and could not be located remotely. The latter result goes against the notorious legal regulations of allowing controlled pharmaceuticals to be given only by qualified pharmacists to approved purchasers. The inevitable conclusion is, thus, that the non-dispensed package of pharmaceuticals has to be removed from the issue tray by a reject device/system/mechanism to the product reject area, which is already included in the dispensing machine of D1 (page 8, lines 1-3). Feature i) of claim 1 is, therefore, implicitly disclosed in D1.

2.8 Regarding the storage of the products in rows and columns (feature d), there is no disclosure in D1 of any particular way the products are stored in the dispensing machine. Although the Board agrees with the Examining Division that in a dispensing machine which is operated remotely the products must be stored in identified and recorded positions, it is not necessary that such a storage system comprises columns and rows like the one in claim 1. This feature is not disclosed in D1 and, hence, it constitutes the only difference between the claim and D1.

2.9 Starting from D1, the skilled person is faced, thus, with the technical problem of providing a suitable storage system for the remote dispensing machine used in the method described therein.

2.10 Document D6 discloses a storage system for a remote dispensing machine in which the products are stored in columns and rows and the location of each product is identified by its row and column, see for example Fig. 13, column 12, lines 44-57 and column 13, line 44 - column 14, line 38 in D6, as well as lines 21-27 of page 1 of the present application (as published). The skilled person looking for a suitable implementation of the product storage system in the dispensing machine used in the method of D1 would readily integrate the storage system of the dispenser described in D6 to the dispensing machine of D1 in an obvious manner, without exercising any inventive skill.

2.11 The conclusion is that the subject matter of claim 1 of the Main request does not involve any inventive step within the meaning of Article 56 EPC 1973.

3. Auxiliary Requests

3.1 Compared to claim 1 of the Main request, **claim 1 of the First Auxiliary** request (see paragraph VIII above) has some slight differences in wording, but there is no substantive difference concerning the defined technical features. The conclusion is the same as for the Main request, i.e. that claim 1 of the First Auxiliary request is obvious with respect to the combination of D1 and D6. The appellant did not contest this conclusion during the oral proceedings.

3.2 Regarding claim 1 of the **Second Auxiliary request** (see paragraph IX above), the appellant pointed to features f) and g) and to the bar code reader in particular. It argued that the claim made clear that the bar code reader was used for reading a bar code on the selected product which was used in the verification that the

selected product was the correct product. It was the bar code reader that allowed for the automatic rejection of a product that was identified as not being the correct product. It added that this feature was not present in claim 1 of the Main and First Auxiliary requests and therefore the conclusions of the Board regarding the obviousness of these requests were not valid for the Second Auxiliary request.

3.2.1 The Board notes that there is no mention of an automatic rejection of product(s) in claim 1 of the Second Auxiliary request. Moreover, the dispensing machine of the method in D1 comprises a bar code reader which reads a bar code printed on the package before it is placed into the machine. This is done in order to address potential errors in the time of stocking the machine, e. g. the wrong product being stacked into a dispensing stack within the machine (page 8, lines 24-30). If such a stocking error is identified, the selected product is retained within an area for rejected packages (i.e. reject bin) within the machine (page 9, lines 1-3). Hence, the subject matter of claim 1 of the Second Auxiliary request does not involve an inventive step with respect to the combination of D1 and D6 for the same reasons as for the Main request.

3.3 The appellant argued that claim 1 of the **Third Auxiliary request** (see paragraph X above) defined an apparatus in detail beyond a mere functional definition and that no such apparatus was disclosed in D1 which described a method for dispensing pharmaceutical packages, but no specific apparatus for carrying out that method. The skilled person would not be in a position to derive such a definition of a dispenser from D1 without hindsight. Claim 1 of the Third

Auxiliary request involved therefore, an inventive step.

3.3.1 The Board does not share the appellant's opinion on this matter. The dispenser defined in claim 1 of the Third Auxiliary request comprises features which are defined by their functions. In the context of the method described in D1 there is also a dispensing machine (i. e. a dispenser) which is used to carry out this method. Since the method underlying the present invention is considered to be obvious in view of the combination of D1 with D6, it would also be obvious for the skilled person to build a corresponding dispensing machine with means to carry out the steps that consisted this method.

3.4 The appellant pointed to features a) and b) of claim 1 of the **Fourth Auxiliary request** (see paragraph XI above) and argued that there was no mention of any network or management server in D1. The management server of the claim, with all the databases it contained, managed the operation of the network of the dispensing terminals. The skilled person starting from D1 would not arrive at the solution of using such a management server without using any inventive skill since there was no relevant disclosure neither in D1 nor in D6.

3.4.1 The Board notes that in page 5, lines 27-30 as well in page 6, lines 16 and 17 of D1 it is stated that the disclosed invention provides a system including a distributed network of dispensing machines which are in data communications with a control centre that is staffed by qualified pharmacists. D1, hence, discloses the use (provision) of a network of dispensing machines (terminals). It is true that there are no details about

the implementation of this network in D1. The standard way of implementing such a network, however, would be to use a server to manage the network's operation. For the network to operate, it would also be necessary to provide lists of the dispensing terminals and their locations and the authorised users who would have access to the network. The use of a management server according to feature b) would be a standard - if not necessary - way to implement the distributed network of dispensing machines disclosed in D1.

- 3.4.2 The appellant contested this conclusion by the Board stating that there were several differences between claim 1 of the Fourth Auxiliary request and the disclosure of D1 - the rejection of the product from the issue tray, the storage system in rows and columns, the management server - and it could not simply be accepted that these were all obvious for the skilled person.
- 3.4.3 The Board does not agree with the appellant. Even if there were several differences over D1, it is not apparent that there is synergy between the differentiating features and it cannot be said that they are all addressing the same technical problem. Rather, they are addressing different, partial technical problems. Regarding the rejection of the product from the issue tray and the storage system in rows and columns, the questions of whether they were obvious were addressed with regard to the Main request (see paragraphs 2.7-2.10 above). The present problem of how to implement a distributed network of dispensing machines is in no connection with the previously addressed technical problems. It is, therefore, legitimate to address it separately. The skilled person in this case would be a computer programmer, who would

find it obvious to provide a management server with all the necessary standard software and databases for managing the distributed network of the dispensing machines. The conclusion is, hence, that the subject matter of claim 1 of the Fourth Auxiliary request does not involve any inventive step within the meaning of Article 56 EPC 1973.

3.5 Regarding claim 1 of the **Fifth Auxiliary request** (see paragraph XII above) the appellant pointed to feature j) and argued that it was made clearer that the product was removed by the reject system from the issue tray to the reject hopper. He repeated the argument that such a feature was not disclosed in D1.

3.5.1 Similar to the Main request (see paragraphs 2.7-2.7.2), this feature is considered to be implicitly disclosed in D1. The subject matter of claim 1 of the Fifth Auxiliary request is therefore obvious with respect to the combination of D1 with D6 for the same reasons as for the Main request.

3.6 As the appellant explained during the oral proceedings, claim 1 of each of the **Sixth to Eleventh Auxiliary requests** (see paragraphs XIII-XVIII above) was essentially identical to the respective claim 1 of the Main and each of the First to Fifth Auxiliary requests with minor amendments in the wording addressing the objections under Article 84 EPC 1973 and 123(2) EPC which the Board had raised in its preliminary opinion. The appellant did not present any further arguments regarding inventive step with respect to these requests.

3.6.1 In the absence of any further arguments, the Board concludes that the subject matter of claim 1 of the

Sixth to Eleventh Auxiliary requests does not involve any inventive step within the meaning of Article 56 EPC 1973, for the same reasons as were explained in relation to the Main and the First to Fifth Auxiliary requests.

4. Since none of the appellant's requests is allowable, the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated