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**Datasheet for the decision  
of 6 April 2017**

**Case Number:** T 1658/12 - 3.4.03

**Application Number:** 05821081.6

**Publication Number:** 1825443

**IPC:** G07F9/00

**Language of the proceedings:** EN

**Title of invention:**  
USER-SPECIFIC DISPENSING SYSTEM

**Applicant:**  
Zito, Arthur J., Jr.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 52(1), 54(2), 123(2)  
EPC 1973 Art. 56

**Keyword:**  
Inventive step - (yes)

**Decisions cited:**  
T 0042/92, T 0969/92, T 0312/94

**Catchword:**

In determining what is made available to the public within the meaning of Article 54(2) EPC by a prior art patent document, it must be borne in mind that it is the description which chiefly serves to disclose the invention in a manner that it may be carried out, whereas the chief function of the claims is to define the subject-matter for which protection is sought. Where a combination of features is found only in the claims (or only in the claims and a "Summary of the Invention" which merely recites the features of the claims), it must be very carefully considered whether this combination truly corresponds to the technical teaching of the document as it would be understood by a skilled person, or whether it is merely an artefact of the claim drafting process aimed at obtaining maximal scope of protection (see Reasons, point 3.8; also T 312/94, Catchword; T 969/92, Point 3, and in particular, page 4, first paragraph; T 42/92, "Orientierungssatz").



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Case Number: T 1658/12 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 6 April 2017**

**Appellant:** Zito, Arthur J., Jr.  
(Applicant) 760 Stacy Oak Court  
Millersville, MD 21108-2538 (US)

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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 6 February 2012  
refusing European patent application No.  
05821081.6 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman** G. Eliasson  
**Members:** S. Ward  
C. Schmidt

## Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division refusing European patent application No. 05 821 081 on the ground that the claimed subject-matter did not involve an inventive step within the meaning of Articles 52(1) and 56 EPC.
- II. At the end of the oral proceedings held before the Board the appellant requested that the decision under appeal be set aside and that a patent be granted in the following version:
- claims 1 to 13 of the main request as filed at the oral proceedings before the Board,
  - pages 1, 2, 2a and 4 to 18 of the description as filed at the oral proceedings before the Board, and
  - drawings: sheets 1 to 7 as published.
- III. The following documents are referred to in this decision:
- D1: US 2002/065579 A1  
D2: WO 01/12035 A
- IV. Claim 1 reads as follows:
- "A system to dispense at least one user-appropriate item on-site, said system comprising:*
- a. a reader (300) capable of reading user-specific information (210, 220, 230) from a user-identifier associated with a user;*
  - b. coded instructions to dispense at least one user-appropriate item based on predetermined criteria and said user-specific information (210, 220, 230);*

*c. at least one storage means (600, 602, 604, 606, 608) capable of storing a plurality of items;*  
*d. a dispensing means (500, 502, 504, 506, 508) coupled with respective at least one storage means (600, 602, 604, 606, 608); and*  
*e. a processor coupled to said dispensing means (500, 502, 504, 506, 508) and to said reader, said processor (400) capable of executing said instructions to actuate the dispensing means (500, 502, 504, 506, 508) to dispense at least one user-appropriate item based on said user-specific information and said predetermined criteria, the system being configured such that once the processor accepts the user-specific information, it executes an instruction to actuate said dispensing means (500, 502, 504, 506, 508)."*

Claim 13 reads as follows:

*"The system according to claim 1, wherein the system comprises:*

*a user-identifier associated with a user, and comprising user-specific information, the user-identifier capable of being read by the reader of the system so as to provide the system with said user-specific information."*

V. The findings of the Examining Division, insofar as they are relevant to the present decision, may be summarised as follows:

The subject-matter of claim 1 [then on file] differed from the dispensing system of document D2 in that this document did not explicitly disclose in the same embodiment that "the processor sends a signal to said at least one dispensing means" in combination with the feature that "presentation of the user-identifier to

the reader causes dispensing of the selected item". This combination would, however, be obvious to the person skilled in the art.

Contrary to the arguments of the applicant that document D2 did not disclose an item being dispensed automatically, without requiring further intervention from the user, document D2 did in fact disclose such an automated use of the system, namely in the embodiment defined by claims 35-38.

Moreover, the choice of implementing an automatic vending option would in any case not introduce an inventive step; this choice would be a business/commercial one, and its technical implementation would be obvious and straightforward for the person skilled in the art.

## **Reasons for the Decision**

1. The appeal is admissible.
2. *Amendments (Article 123(2) EPC)*
  - 2.1 The subject-matter of claim 1 is a combination of the subject-matter of claim 1 as originally filed, incorporating minor clarifications, plus a feature disclosed in the original description (page 7, lines 7-9).

In present claim 1, the user identifier serves to define - but is not part of - the claimed system, whereas the system of original claim 1 comprised a user

identifier. However, the application as filed clearly discloses a dispensing system (e.g. a vending machine), a user identifier (e.g. an RFID) for use with the dispensing system, and the combination of the two. The Board therefore has no objection to the system of claim 1 being defined in the present manner, with a system comprising both the dispensing system and a user identifier being defined in claim 13.

The other dependent claims (2-12) are based on dependent claims 2-4, 6-9 and 24-27 as originally filed.

2.2 The Board is therefore satisfied that the requirements of Article 123(2) EPC are met.

3. *Differences over document D2*

3.1 Document D2 was taken as the closest prior art in the the contested decision.

The analysis of the difference over document D2 in the contested decision is based on features which are no longer present in claim 1, and therefore does not need to be discussed here.

3.2 Document D2 discloses a system for dispensing beverages in which a typical interaction between a customer ("Frank") and the system is set out in Example 6 (page 29). According to this example, user-specific information ("unique identification number") is read from a user-identifier ("beverage card") by a card reader, and the system uses this to retrieve predetermined criteria ("Frank's profile").

This information is not, however, used to dispense a beverage directly, but is analysed "to determine the beverage options to display to Frank". Only after Frank inputs his selection from this customised menu is the beverage dispensed. A step of active selection by the user is provided even in cases where a particular beverage formulation is saved (possibly even on the card - see page 8, lines 11-12). For example, consumers "can get their own designed drink or choose from a variety of drinks that are close to their prescribed customized beverage in personal acceptance" (Examples 2-4).

Thus, document D2 discloses a system configured to dispense a particular item *selected by a user*.

3.3 In the contested decision, it was argued that the technical teaching of document D2 also included variants in which a previously selected beverage stored in the profile is directly dispensed. The Board does not believe this to be an accurate assessment (see points 3.6 to 3.10, below), but even if it were, this would still correspond to dispensing an item according to a specific selection made (previously) by the user.

3.4 In the light of the above, a first difference over document D2 is that the claimed system is configured to dispense "a user-appropriate item".

In the Board's judgement, the term "user-appropriate" clearly conveys the idea that what is dispensed is something which the system has determined would, at least potentially, be useful or of interest to the user, rather than an item which is specifically selected by the user.



According to some embodiments of the present invention it is certainly the case that the user-specific information may include user preferences (see e.g. page 7, lines 17-21), but it is clear that this does not refer to the prior user-selection of a specific product. Firstly, the word "preference", in its normal sense, indicates a predilection or liking for something e.g. certain types of food or music, rather than a selection of a specific product. Secondly, interpreting the word "preference" to extend to an instruction to dispense a specific item would be inconsistent with the invention as defined in claim 1, since it would mean that the dispensed item would be based on user-specific information only, and not on the combination of user-specific information and predetermined criteria, as defined in the claim.

3.5 A further difference arises as a result of the following features:

*"coded instructions to dispense at least one user-appropriate item based on predetermined criteria and said user-specific information (210, 220, 230)"*

and

*"said processor (400) capable of executing said instructions to actuate the dispensing means (500, 502, 504, 506, 508) to dispense at least one user-appropriate item based on said user-specific information and said predetermined criteria, the system being configured such that once the processor accepts the user-specific information, it executes an instruction to actuate said dispensing means (500, 502, 504, 506, 508)."*

Taken together, these features define a system configured such that the presentation of a user-identifier to the reader leads *directly* to the dispensing of a user-appropriate item, without any further intervention by the user.

- 3.6 The Examining Division argued that D2 disclosed examples where presentation of the user-identifier to the reader led directly to dispensing, citing the following passages of the description: page 6, lines 19-22; page 17, line 18 - page 18, line 13; page 26, lines 4-13 and page 30, lines 1-9 (Reasons, Point 12.1, feature f).

The Board, however, can find nothing in these passages which would point unambiguously to the sort of direct dispensing of beverages defined in claim 1. In fact, the last cited passage is part of Example 6, which, as previously noted, explicitly provides for user selection from a menu.

- 3.7 The Examining Division also argued that claims 35-38 disclosed a system configured in the claimed manner.

Claim 35 defines a method for providing a customized beverage product to a consumer, comprising *inter alia* the steps of obtaining consumer preference data; determining a consumer beverage formulation corresponding to the consumer preference data; and providing the consumer with a corresponding customized beverage. Essentially the same combination of features is recited in the Summary of the Invention (page 4, lines 28-32). Claim 36 defines that the step of obtaining consumer preference data comprises collecting a user identification from the consumer and retrieving

the consumer preference data from a data store corresponding to the user identification.

Since claims 35-38 do not define a user selection step, the Examining Division found that they provided a disclosure of direct dispensing of items (beverages) as defined in claim 1 of the present application.

- 3.8 In determining what is made available to the public within the meaning of Article 54(2) EPC by a prior art patent document, such as International Application D2, it must be borne in mind that it is the description which chiefly serves to disclose the invention in a manner that it may be carried out, whereas the chief function of the claims is to define the subject-matter for which protection is sought. Where a combination of features is found only in the claims (or only in the claims and a "Summary of the Invention" which merely recites the features of the claims), it must be very carefully considered whether this combination truly corresponds to the technical teaching of the document as it would be understood by a skilled person, or whether it is merely an artefact of the claim drafting process aimed at obtaining maximal scope of protection.

This applies all the more in the case of *unexamined* applications such as document D2.

- 3.9 As noted above, many clear examples may be found in document D2 of systems configured to dispense beverages based *inter alia* on a user selection step. The Board has not, however, found any example or embodiment in which it is unambiguously clear that a user selection step is absent, including in those passages cited by the Examining Division. Consequently, the Board concludes that on the basis of the contents of the

document as a whole, D2 does not disclose direct dispensing without a user selection step, as defined by the claimed features set out under point 3.5, above.

3.10 This approach is consistent with the settled case law of the boards of appeal as set out, for example, in T 312/94:

*"It is a general legal rule for the interpretation of any document, in particular a patent application or patent, in order to determine its true meaning and thus its content and disclosure, that no part of such a document should be construed in isolation from the remainder of the document: on the contrary, each part of such a document must be construed in the context of the contents of the document as a whole. Thus, even though a part of a document appears to have a particular meaning when interpreted literally and in isolation from the remainder of the document, the true meaning of that part of the document may be different having regard to the remainder of the document."* (T 312/94, Catchword; see also T 969/92, Point 3, and in particular, page 4, first paragraph; T 42/92, "Orientierungssatz").

4. *Inventive step based on document D2*

4.1 Unlike document D2 the claimed system is configured such that the presentation of a user-identifier to the reader leads directly to the dispensing of a user-appropriate item, understood in the above sense.

The effect is that a suitable item is dispensed, which corresponds, in the words of the appellant, to "what the operator wants to dispense to the user". As

explained in the description, one problem addressed by such a system would be in providing an appropriate promotional item to a user.

- 4.2 The Examining Division argued that choosing to dispense promotional items would be a business or commercial decision with an obvious technical implementation.

The Board, however, agrees with the appellant that the claimed system provides a technical solution (involving technical features such as a reader, a user-identifier, user-specific information, coded instructions and a processor) to a technical problem, i.e. rapid and accurate dispensing of a user-appropriate item. By configuring the system to dispense the item without user selection, user error is eliminated.

- 4.3 The system of document D2 is designed for an entirely different purpose (dispensing of a user-selected item), and the Board sees no realistic pathway by which the skilled person would be led to the claimed subject-matter in an obvious manner from this document.

5. *Inventive step based on document D1*

- 5.1 Document D1, which was cited in the International phase, discloses a system for dispensing items (a vending machine) in which a user making a purchase may be invited to take part in a marketing promotion or survey, for which the reward may be a supplementary product.

According to certain embodiments (see paragraphs [0027], [0031]) user data may be read from a card and combined with information stored in the system, such as

a customer's purchase history (i.e. "predetermined criteria").

5.2 However, it is the marketing promotion (e.g. a "sales pitch" - see paragraph [0041]) which may be based on the customer's purchase history, (paragraphs [0027], [0031]), and which may therefore be appropriate for the user. It is not disclosed that the product dispensed as a reward is the subject of the marketing promotion, or that this product is determined on the basis of the customer's purchase history. Thus, in document D1, neither the product purchased (which is selected by the user) nor the reward item are "user-appropriate" items as defined in claim 1.

5.3 Furthermore, the system of document D1 is configured to dispense items only in conjunction with steps of user intervention and selection, as set out, for example, in Figs. 9A-9C. The purchased product is selected in a conventional manner, and the reward product is dispensed after a user firstly agrees to participate in a survey or marketing promotion, and secondly provides responses as part of that participation. Document D1 does not therefore disclose a system configured such that once the processor accepts the user-specific information, it executes an instruction to actuate said dispensing means.

5.4 The system of document D1 is essentially a conventional vending machine adapted to carry out customer surveys or marketing promotions. The Board does not find it plausible that a skilled person would incorporate into this vending machine the distinguishing features of claim 1 of the present invention, which have nothing to do with the purpose for which the system of document D1 was created.

6. The Board therefore concludes that the subject-matter of claim 1 involves an inventive step within the meaning of Article 52(1) EPC and 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 Examining Division with the order to grant a patent in the following version:
  - claims 1 to 13 of the main request as filed at the oral proceedings before the Board,
  - pages 1, 2, 2a and 4 to 18 of the description as filed at the oral proceedings before the Board, and
  - drawings: sheets 1 to 7 as published.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated