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**Datasheet for the decision
of 3 May 2017**

Case Number: T 0854/13 - 3.5.03

Application Number: 04708692.1

Publication Number: 1595187

IPC: G05B19/418

Language of the proceedings: EN

Title of invention:

CLOSED LOOP LOCATION DETECTION SYSTEM

Applicant:

Cogiscan Inc.

Headword:

Closed loop location detection system/COGISCAN

Relevant legal provisions:

EPC Art. 84, 123(2)

Keyword:

Clarity (no) - main request and 1st and 2nd auxiliary requests
Added subject-matter (yes) - 3rd and 4th auxiliary requests

Decisions cited:

G 0001/93

Catchword:



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Case Number: T 0854/13 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 3 May 2017

Appellant: Cogiscan Inc.
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 14 November 2012 refusing European patent application No. 04708692.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman F. van der Voort
Members: T. Snell
P. Guntz

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 04708692.1 with International Publication Number WO 2004/070484 A1.
- II. The refusal was based on the ground that claim 1 respectively of a main request and first and second auxiliary requests was not clear and therefore did not comply with Article 84 EPC. A third auxiliary request was not admitted inter alia because claim 1 prima facie did not comply with Article 123(2) EPC.
- III. The appellant filed an appeal against the above decision. In the statement of grounds of appeal, the appellant implicitly 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 or, in the alternative, one of first to third auxiliary requests, all as refused by the examining division, and a fourth auxiliary request filed with the statement of grounds of appeal.
- IV. In a communication accompanying a summons to oral proceedings, the board gave a preliminary view, inter alia, that claim 1 of the main request and the first and second auxiliary requests, respectively, was not clear, contrary to Article 84 EPC, and that claim 1 of the third and fourth auxiliary requests, respectively, did not comply with Article 123(2) EPC.
- V. The appellant informed the board by fax letter on 2 May 2017 that it would not attend the oral proceedings, and requested "a decision according to the state of the file".

- VI. Oral proceedings were held on 3 May 2017 in the absence of the appellant.

On the basis of the written submissions, 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 as filed with the letter dated 28 December 2007 or, in the alternative, on the basis of the claims of one of first and second auxiliary requests as filed with the letter dated 24 September 2012, the third auxiliary request as filed at the oral proceedings before the examining division on 24 October 2012, or the fourth auxiliary request as filed with statement of grounds of appeal dated 25 March 2013.

At the end of the oral proceedings, the chairman announced the board's decision.

- VII. Claim 1 of the main request reads as follows:

"A closed loop location detection system for use in monitoring simultaneously the presence or absence of objects in at least two locations in a manufacturing process, comprising at least one detectable element per location and adapted to be associated with a respective object to be monitored, and at least one detecting device adapted to detect the detectable elements associated with the objects and so determine whether objects are present in, or absent from, all of the locations being monitored."

- VIII. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the following wording has been added:

", wherein means are provided for causing an object to be fed to a location determined to be devoid of objects by said detecting device, wherein said closed loop location detection system uses RFID technology, said detection device comprising at least one antenna and said detectable element comprising at least one RF tag, and wherein there is provided one said antenna for each location to be monitored, whereby for a given location, a respective antenna detects the presence or absence of a respective tag thereby determining whether an object is present in said given location."

IX. Claim 1 of the second auxiliary request is the same as claim 1 of the first auxiliary request except that the clause

"wherein there is provided one said antenna for each location to be monitored, whereby for a given location, a respective antenna detects the presence or absence of a respective tag thereby determining whether an object is present in said given location"

is replaced by the clause

"wherein said antenna is adapted to monitor more than one location, a position tag being associated with each location and means to deactivate said position tag being provided on each object, whereby when the object is fed to a given location, said means to deactivate, provided on said given object, cause said position tag associated with said given location to stop being detected by said antenna thereby determining that a specific object has been fed to a specific location".

- X. Claim 1 respectively of the third and fourth auxiliary requests is the same as claim 1 respectively of the main and first auxiliary requests except that the term "closed loop" has been deleted.

Reasons for the Decision

1. *Main request - claim 1 - clarity (Article 84 EPC)*
- 1.1 The present application relates to monitoring, or "validating", the location of objects during a manufacturing process. The description (cf. page 4, lines 8-10) states that the present application concerns "an extension of the line validation system disclosed in afore-mentioned PCT Publication No. WO 01/82009 in that it provides a closed loop solution to the validation process". This PCT application is in the name of the present applicant and will be referred to as D1.
- 1.2 The examining division argued that the expression "closed loop" in claim 1 was unclear, contrary to Article 84 EPC.

In this respect, the examining division stated the following:

"Claim 1 defines a "closed loop location detection system". It is, however, not possible to establish the technical significance of the feature "closed loop". It is neither clear how the components of the system defined in claim 1 should be arranged to form a closed loop, nor is it possible to construe "closed loop" as an additional feature that acts in combination with the components of the system defined in claim 1."

- 1.3 The appellant's main counter-argument set out in the statement of grounds of appeal can be summarised as follows:

In the light of the description, the skilled person would construe the expression "closed loop" as meaning an automatic system in which not only the presence of the objects is detected but also the absence of the objects is detected, thereby eliminating the need of any human intervention. This follows from comparisons with the prior art in the description which are referred to as "not fully closed loop" (cf. page 1, line 18), or "open loop" (D1, page 7, lines 1-4, (cf. page 1, line 32, of the description of the present application)) which require at least some level of human intervention, and by the statement on page 8, lines 5-8 of the description of the present application, which reads "Therefore, the invention provides a fully closed loop position monitoring system, ..., which is independent of operator intervention (no manual scanning in most cases).".

- 1.4 The board finds the appellant's argument unconvincing. Firstly, terms should be given their normal meaning in the art without needing to refer to the description. The normal meaning of "closed loop" is the application of feedback control. This does not inherently mean either that a process is fully automatic or that there is no human intervention. Secondly, the passages of the description of the present application and D1 referred to by the appellant do not, in the board's view, define the term "closed loop" in this way. In this respect, D1 does not use the term "open loop", even if the present application characterises D1 as an open loop system. In fact, D1 apparently envisages full automation, i.e. a fully closed loop system (cf. page 11, lines 15-29).

Further, the phrase "not fully closed loop **and** require some level of intervention by the operator" (cf. page 1, lines 18 and 19, of the description of the present application; emphasis added by the Board) does not in itself mean that a system without operator intervention is a closed loop system. Finally, the phrase "Therefore, the invention provides a fully closed loop position monitoring system, ..., which is independent of operator intervention (no manual scanning in most cases)" merely links operator intervention with the scanning operation and also does not mean that a system without operator intervention is inherently a closed loop system.

1.5 In the board's view, "closed loop" in claim 1 has to be interpreted as meaning that there is implicitly feedback control. However, it is not clear if this applies to the features explicitly defined in claim 1, or is an additional feature. In fact, having regard to the description, plausibly "closed loop" refers to the subsequent feeding of an object to a location determined to be devoid of objects by the detecting device (cf. the abstract and the description, page 2, line 29, to page 3, line 2, and page 4, lines 25-29). However, because claim 1 leaves it entirely open as to what feature or features "closed loop" refers to, the board agrees with examining division that claim 1 is unclear (Article 84 EPC).

1.6 In addition, claim 1 is unclear with respect to the phrase "comprising at least one detectable element per location and adapted to be associated with a respective object to be monitored". The description discloses detectable elements at each location ("position tags") as well as detectable elements attached to objects. The board can however find no support in the description

that the position tags are adapted to be associated with a respective object, since they are apparently merely used to detect whether an object is present at the location (cf. page 5, 3rd and 4th paragraphs). Further, the detectable elements associated with (attached to) objects are mobile, which means that in general there is not one object per location. Consequently, neither the position tags nor the object tags appear to be detectable elements in the sense of claim 1.

- 1.7 The board concludes that claim 1 of the main request does not comply with Article 84 EPC.

2. *First auxiliary request - claim 1 - clarity (Article 84 EPC)*
 - 2.1 The comments made in respect of claim 1 of the main request apply, *mutatis mutandis*, to claim 1 of the first auxiliary request. Although claim 1 now includes the feature "wherein means are provided for causing an object to be fed to a location determined to be devoid of objects by said detecting device", which could plausibly form part of a closed loop control system, claim 1 still lacks clarity, since it is directed to a closed loop location detection system rather than a closed loop system for feeding objects to specific locations, so that it is unclear whether the "closed loop" feature applies to feeding objects to specific locations or to features concerned with location detection, e.g. as part of the method for reading the information from the "detectable elements" (cf. D1, page 12, last line, to page 13, line 1).

2.2 The board therefore concludes that claim 1 of the first auxiliary request does not comply with Article 84 EPC either.

3. *Second auxiliary request - claim 1 - clarity (Article 84 EPC)*

3.1 The comments made in respect of claim 1 of the first auxiliary request essentially apply, mutatis mutandis, to claim 1 of the second auxiliary request.

3.2 Claim 1 of this request is further not clear as it is unclear whether a "position tag" is a "detectable element" within the meaning of the antecedent features of the claim, or is a separate feature.

3.3 The board concludes that claim 1 of the second auxiliary request does not comply with Article 84 EPC either.

4. *Third and fourth auxiliary requests - claim 1 - Article 123(2) EPC*

4.1 Claim 1 respectively of the third and fourth auxiliary requests is the same as claim 1 respectively of the main and first auxiliary requests except that the term "closed loop" has been deleted.

4.2 In the view of the board, this amendment contravenes Article 123(2) EPC, because the feature "closed loop" is presented throughout the description and claims as originally filed as an integral feature of the claimed subject-matter (cf. e.g. each of the independent claims 1, 10, 19 and 25, and the description on page 1, lines 17-19, page 2, lines 3-5, page 4, lines 8-12, and page 8, lines 5-8). Even if the meaning of this feature in

the present context is unclear, the skilled person, due to the emphasis placed on it in the description and claims as filed, would not be in a position to conclude directly and unambiguously that it is unnecessary or even meaningless, and can therefore be omitted. Thus, the extension to a system without a closed loop encompasses new technical information. The board notes that the essential idea underlying Article 123(2) EPC is that an applicant should not be allowed to improve his position in a way which could be damaging to the legal certainty of third parties relying on the content of the original application (cf. G 1/93, OJ EPO 1994, 541, point 9 of the reasons), which would be the case here if protection were extended to embrace systems which were not closed loop.

4.3 The appellant did not comment on the board's objection raised in the communication accompanying the summons to oral proceedings.

4.4 Consequently, the board concludes that claim 1 respectively of the third and fourth of auxiliary requests does not comply with Article 123(2) EPC.

5. *Conclusion*

As there is no allowable request, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated