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**Datasheet for the decision
of 9 July 2019**

Case Number: T 0594/14 - 3.5.02

Application Number: 11169827.0

Publication Number: 2398003

IPC: G08B21/04

Language of the proceedings: EN

Title of invention:

Method and system for fall detection

Applicant:

General Electric Company

Relevant legal provisions:

EPC Art. 123(2)

RPBA Art. 12(4)

Keyword:

Amendments - main and first auxiliary request - allowable (no)
Late-filed request - second auxiliary request could have been
filed in first instance proceedings (yes)



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Case Number: T 0594/14 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 9 July 2019

Appellant: General Electric Company
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 14 October 2013
refusing European patent application No.
11169827.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Lord
Members: H. Bronold
R. Cramer

Summary of Facts and Submissions

- I. The appeal of the applicant lies from the decision of the examining division refusing European patent application No. 11 169 827.0 inter alia due to inadmissible amendments (Article 123(2) EPC).
- II. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of their main request, or, if that was not possible, on the basis of the claims of one of their first or second auxiliary requests, all filed together with the statement setting out the grounds of appeal.
- III. In a communication under Article 15(1) RPBA sent together with summons to oral proceedings to be held on 9 July 2019, the board informed the appellant that it intended to dismiss the appeal because the main request and the first auxiliary request contravened Article 123(2) EPC and because it intended to exercise its power to hold inadmissible the second auxiliary request.
- IV. With letter dated 4 July 2019 the appellant informed the board that they would not be attending the oral proceedings scheduled for 9 July 2019.
- V. Oral proceedings before the board were held in the absence of the appellant on 9 July 2019.

VI. Claim 1 according to the main request reads as follows:

"A method for detecting a fall event, the method comprising:
positioning a data acquisition system (102) at a desired position and establishing a reference line (110) based on the desired position of the data acquisition system;
partitioning a field of view of the data acquisition system into an upper region (112) and a lower region (114) based on the reference line (110);
acquiring motion information corresponding to a person in the field of view of the data acquisition system based on a plurality of pixels corresponding to the person that experience a change in a corresponding parameter;
determining if the acquired motion information corresponds to the upper region (112), the lower region (114), or a combination thereof, in the field of view of the data acquisition system based in the plurality of pixels corresponding to the person that experience a change in a corresponding parameter;
computing a duration of motion, a magnitude of motion and an area of motion of the person in the upper region (112), the lower region (114) or a combination thereof based on the plurality of pixels that experience a change in a corresponding parameter; and
detecting a specific fall event corresponding to the person based on the duration of motion, the determined magnitude of motion and the determined area of motion of the person in the upper region (112), lower region (114) or a combination thereof of the field of view of the data acquisition system."

Independent claim 11 relates to a corresponding fall detection system.

- VII. The independent claims 1 and 11 according to the first auxiliary request differ from those of the main request in that the expression "duration of motion" is replaced by "duration of the change in the corresponding parameter experienced by the recently changed pixels".
- VIII. The subject-matter of the second auxiliary request is directed to a method and system for detecting a fall event, wherein a data acquisition system is positioned at a position and a horizontal reference line is established based on the position of the data acquisition system, and wherein the data acquisition system is positioned such that the reference line corresponds to a waist height of a person.
- IX. The arguments of the appellant, as far as they are relevant for this decision, can be summarised as follows:

The feature "duration of motion of a person" in the main request was originally disclosed in the last sentence of paragraph [0029] of the originally filed application which reads "The nature and duration of change in the corresponding parameter experienced by the recently change pixels in the determined time period may be indicative of a motion event corresponding to the person 108". The first sentence of paragraph [0030] and the third sentence of paragraph [0039] provided similar support. Moreover, according to the Guidelines for Examination section H-IV-2.3, literal support was not required by the wording of Article 123(2) EPC.

In the first auxiliary request the feature "duration of motion" was amended according to the phrase supported by paragraph [0040] of the application as suggested by the examiner.

The second auxiliary request was amended as suggested by the examiner in the European Search report, and in the examining division's communication dated 3 September 2012.

Reasons for the Decision

1. Admissibility

The appeal was filed in due time and form and is therefore admissible.

2. Main request (Article 123(2) EPC)

The independent claims 1 and 11 according to the main request contain the feature "duration of motion ... of a person". This feature was already objected to under Article 123(2) EPC in the contested decision and the board sees no reason to deviate from the examining division's findings.

In particular, it appears from paragraph [0040] that the claimed expression "duration of motion" is based on the disclosed expression "duration of the change in the corresponding parameter experienced by the recently

changed pixels". However, this merely relates to pixel-level information and is not disclosed in the context of the duration of motion of a person. The same holds true for the passages of the original disclosure cited by the appellant in their statement setting out the grounds of appeal, i.e. the last sentence of paragraph [0029], the first sentence of paragraph [0030] and the third sentence of paragraph [0039] all of which disclose similar pixel-level information.

Therefore, the board has arrived at the conclusion that the main request contravenes Article 123(2) EPC.

3. First auxiliary request (Article 123(2) EPC)

Compared to the main request, in the first auxiliary request, the expression "duration of motion ... of the person" is replaced with "duration of the change in the corresponding parameter experienced by the recently changed pixels ... of the person".

The wording added to the independent claims is allegedly disclosed in the originally filed description in paragraph [0040]. However, the amendment is used in an undisclosed context in the claims and leaves out the remaining features of the described embodiment such as processing subsystem 120 and timing circuitry 306.

As already pointed out above with respect to the main request, the disclosure in paragraph [0040] does not relate to the duration of motion of a person. Moreover, the wording added to the independent claims relates to information on the pixel-level while the remaining two criteria in the claimed method step of computing according to claim 1 and the corresponding apparatus

feature in claim 11 belong to a higher level of abstraction. Thus, independent claims 1 and 11 according to the first auxiliary request define a combination of pixel-level information and non-pixel-level information. Such a combination is not originally disclosed either.

Therefore, the board has arrived at the conclusion that the first auxiliary request also contravenes Article 123(2) EPC.

4. Second auxiliary request (Article 12(4) RPBA)

The subject-matter according to the second auxiliary request is based on a suggestion made to the appellant repeatedly during the examination proceedings.

Already in the European Search Opinion, the examiner suggested that subject-matter directed to positioning the camera at waist height and making a horizontal line the reference at this height might be patentable. The communication of the examining division dated 3 September 2012 contained a similar suggestion and the annex to the summons to oral proceedings before the examining division dated 10 July 2013 made reference to it.

Nevertheless, the appellant decided not to file a request directed to subject-matter of this nature during the proceedings before the first instance, not even as an auxiliary request.

Moreover, the subject-matter according to the second auxiliary request diverges from the subject-matter according to the main and first auxiliary requests.

Article 12(4) RPBA provides the board with the power to hold inadmissible requests which could have been presented in the first instance proceedings.

Since the appellant deliberately decided not to file a request directed to the suggested subject-matter during the first instance proceedings, although it is evident from the file that they could have done so, the board exercises its power under Article 12(4) RPBA not to admit the second auxiliary request.

5. Since there is no admissible request on file, the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated