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Datasheet for the decision of 18 March 2020

Case Number: T 1657/14 - 3.5.01

Application Number: 10730168.1

Publication Number: 2353089

IPC: G06F11/00, G06F11/07

Language of the proceedings: EN

Title of invention:
METHOD FOR REPRESENTATION OF SAFETY-RELEVANT INFORMATION ON A DISPLAY AND APPARATUS FOR THE APPLICATION OF THE METHOD

Patent Proprietor:
Deuta-Werke GmbH

Former Opponent:
Digital Simplex Pte Ltd.
Bombardier Transportation GmbH

Headword:
SAFETY-RELEVANT INFORMATION ON A DISPLAY/DEUTA

Relevant legal provisions:
EPC Art. 54(2), 56, 84, 100(a), 100(b)
EPC R. 79(2)

Keyword:
Novelty - main request (yes) - the narrow concept of novelty under the EPC excludes equivalents of features which are explicitly disclosed
Inventive step - main request (yes)
Grounds for opposition - extent of opposition - withdrawal of oppositions

Decisions cited:
T 0167/84, T 0517/90, T 0629/90, T 0270/94, T 0046/10

Catchword:
see Reasons - points 2.4.3 and 2.4.5

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Case Number: T 1657/14 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 18 March 2020

Appellant: (Patent Proprietor)	Deuta-Werke GmbH Paffrather Strasse 140 51465 Bergisch Gladbach (DE)
Representative:	Lippert Stachow Patentanwälte Rechtsanwälte Partnerschaft mbB Frankenforster Strasse 135-137 51427 Bergisch Gladbach (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 7 July 2014 revoking European patent No. 2353089 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	W. Chandler
Members:	M. Höhn
	Y. Podbielski

Summary of Facts and Submissions

I. This appeal is against the decision of the opposition division revoking European patent No. 2353089 pursuant to Article 101(2) EPC on the ground of lack of novelty (Article 54(2) EPC) with regard to prior-art publication:

E18: WO 2007/104531 A1.

II. In the statement setting out the grounds of appeal, the patentee (appellant) requested that the appealed decision be set aside and that the patent be maintained as granted (main request) or as amended with the claims of one of the first to fifth auxiliary requests as submitted with the statement setting out the grounds of appeal. Oral proceedings were requested on an auxiliary basis.

III. Opponent 1 (O1; respondent) has withdrawn its opposition with letter dated 11 April 2016 and, hence, is no longer party to the appeal proceedings. In a reply dated 7 April 2015 opponent 1 had provided further arguments in the appeal proceedings.

IV. Opponent 2 (O2; respondent) had already withdrawn its opposition during the opposition proceedings with letter dated 22 August 2013. Consequently, opponent 2 has not been a party from the outset of the appeal proceedings.

V. The appellant essentially argued that the subject-matter of independent claims 1 and 16 was novel over the disclosure of E18.

VI. Opponent 1 (O1) essentially argued that the subject-matter of claims 1 and 16 was anticipated by E18 or at least rendered obvious by E2 (DE102005045601 A1) or E3 (DE3411015A1), each combined with the skilled person's common general knowledge (Article 100(a) EPC). In addition, the subject-matter of claims 1 and 16 was not sufficiently disclosed (Article 100(b) EPC).

Reasons for the Decision

Main request

1. Independent claim 1 according to the main request is directed to a (the nomenclature according to the contested decision):

M1 - Method for the safe representation of a safety-relevant information including:

M2 - entry of at least one input parameter into a processor,

M3 - computerized processing of the input parameter transforming it into a sequence of image data that represent the input parameter,

M4 - transmitting the sequence of image data to a display and representing the sequence of image data on the display, characterized in that

M5 - the sequence of image data is transmitted to a test unit, a safety test is carried out

M6 - by computerized generation of a test code for the sequence of image data,

M7 - the test code is checked against several reference codes,

M8 - the then identified reference code is assigned to a corresponding possible value of the input parameter and

M9 - checked against the value of the input parameter with the test unit generating either a positive or a negative test result

M10 - to provoke a safety-focused reaction.

Independent claim 16 is directed to a device with corresponding apparatus features.

Requirements under Article 100(a) EPC

2. Novelty in view of E18

2.1 E18 is directed to a medicament dosing device configured to perform a method wherein a displayed dose is compared with a set dose. The method is directed to representing safety-relevant information in a safe way. In the dosing device, a processor receives dose-setting information and displays the set dose on a display by providing the display with dose-displaying information. The processor collects the dose-displaying information from the display and generates a checksum based on the dose-displaying information. In this respect, the processor acts as "test unit" (see e.g. page 4, lines 10 to 18).

2.2 The Board does not agree with the appellant's argument that feature M1 of claim 1 has to be interpreted as a functional feature with regard to the expression "for the safe representation" (alleged difference F1.1 in the statement setting out the grounds of appeal). In any case, in the Board's view, the teaching of E18 anticipates this by dealing with presentation of safety-relevant medical information.

2.3 Furthermore, the Board does not agree with the appellant's argument that feature M2 requires the test unit to be a separate unit physically independent from the processor introduced in the preamble (alleged difference F1.2 in the statement setting out the grounds of appeal). Feature M2 has to be interpreted in the light of the description according to paragraph [0025], which reads:

"The test unit can be a separate device or integrated within the graphic generating computer unit as well as within a separate monitor unit. A software-controlled realization has the particular advantage that even more extensive independence of the processor in regard of platform and software is possible."

In claim 1 as granted the test unit 10 is not specified to be a separate unit (in contrast to claim 1 according to the first auxiliary request). The wording of claim 1 as granted is so broad that, when interpreted in the light of the above mentioned passage of the description, it also covers the test unit being part of the processor as disclosed in E18 (see page 3, line 1 onwards *"In one embodiment the processor comprises a combination of a programmable unit and an integrated circuit (IC) dedicated to generate the checksum value. In this embodiment the programmable unit may collect*

the dose-setting information, while the dose-displaying information may be collected by the IC which generates a checksum value and forwards the generated checksum value to the processor, which then relates the generated checksum value to the reference checksum value.")

2.4 The appellant further argued that E18 did not disclose that a corresponding possible value of the input parameter is assigned to an identified reference code for checking against the value of the input parameter according to features M8 and M9 (alleged difference F1.3 in the statement setting out the grounds of appeal).

2.4.1 With regard to features M8 and M9 the opposition division (OD) essentially argued (see page 6 of the contested decision):

"In order to assess features M8 and M9 a further interpretation of the claim's wording is necessary as feature M9 appears to lack clarity, see sections and below. OD interprets features M8 and M9 as follows (in line with O2's interpretation):

> *"the then identified reference code is assigned to a corresponding possible value of the input parameter and the latter is checked against the value of the input parameter".*

O2 refers to E18, page 5, lines 1-3 as disclosing features M8 and M9. OD agrees. The same wording is used on page 6, lines 24-26 and in claim 4, from which it is explicit that the act of relating the displayed symbols to the dose setting information is an additional one, different from the relating of checksums. Claim 3, from

which claim 4 directly depends, clearly states that the ckecksum is used to identify the symbols displayed in the display (which indicate the dose setting information), which are then (according to claim 4) related to the dose setting information. This corresponds to feature M8. Finally, claim 4 defines that this is used to determine whether the displayed dose corresponds to the set dose, which is equivalent to feature M9)".

2.4.2 Regarding the alleged lack of clarity in features M8 and M9 mentioned by the opposition division, the Board notes that this is not relevant for the patent as granted, because Article 84 is not a valid ground of opposition. The Board is in any event of the opinion that features M8 and M9 are clear in themselves by specifying directly comparing a possible input parameter against the actual value of the input parameter. This is even clearer with regard to the corresponding features in independent claim 16, which explicitly states that the reference value is in the form of an input parameter to be compared to the actual input parameter. Both features were already present in the set of claims as originally filed. The skilled reader would not understand features M8 and M9 in a way to directly compare a checksum with an input parameter, but would understand that the wording has to be read in a way that input parameters are compared to each other.

2.4.3 The Board's examination can consider any arguments submitted by the respondent prior to the withdrawal of the opposition (see T 629/90 and T 46/10). Despite the fact that the novelty objection based on E18 was validly raised by opponent 2, the arguments submitted by opponent 1 in this regard before withdrawal of its own opposition can be considered. Since multiple admissible oppositions initiate only a single opposition proceedings, each opponent can rely on an opposition ground duly submitted by other opponents and this ground of opposition was validly raised and substantiated as well as communicated to all parties in accordance with Rule 79(2) EPC (see T 270/94).

However, the Board does not agree with the arguments of opponent 1 put forward regarding features M8 and M9. In particular, opponent 1 alleged that feature M9 would be implicitly disclosed as the skilled person would read between the lines that determining identity between displayed dose and set dose would require directly comparing a possible input parameter against the actual value of the input parameter (see pages 13 and 20 of the letter dated 7 April 2015).

2.4.4 While the Board agrees with the decision under appeal as far as feature M8 is concerned, it has doubts as to feature M9. With regard to the question how exactly E18 relates the displayed symbol or sequence of symbols to the dose-setting information so as to determine whether the displayed dose corresponds to the set dose, the skilled reader of E18 learns from page 3, lines 15 to 17

"*Determination of whether the displayed dose corresponds to the set dose is performed by comparing*

each of the generated checksum values with each of the reference checksum values".

The skilled reader of E18 does not have to rely on implicit disclosure, but learns from this explicit disclosure that checksums are to be compared, which is different from comparing a possible input parameter against the actual value of the input parameter according to feature M9. The Board does not find a direct and unambiguous disclosure in E18 for directly comparing against the value of the input parameter. Such a difference might be slight, but in view of the novelty test of direct and unambiguous disclosure, feature M9 is therefore novel over E18. The difference even has technical implications, e.g. with regard to the technical data flow.

2.4.5 The opposition division appears to have been aware of this difference and concluded that the disclosure according to claims 3 and 4 of E18 was "equivalent" to feature M9 (see page 6, last paragraph of the contested decision, last sentence - see above).

However, equivalents which are not disclosed in a published document must not be considered in assessing novelty according to Article 54 EPC, but under the EPC are part of assessing inventive step (Article 56 EPC) according to established case law (see T 167/84 and T 517/90). The narrow concept of novelty under the EPC excludes equivalents of features which are explicitly or implicitly disclosed.

The argumentation in the contested decision cannot therefore be upheld.

The subject-matter of independent claim 1 is therefore novel over the disclosure of E18.

2.4.6 The same reasoning applies, *mutatis mutandis*, to corresponding independent apparatus claim 16, which comprises a corresponding feature to M9 that reads:

"assigning the thus identified reference code a corresponding value of the input parameter as a reference value and then comparing this reference value with the input parameter".

3. Inventive step - Article 56 EPC

3.1 Neither opponent raised an objection of lack of inventive step based on E18 as closest prior art, neither during the opposition nor in the appeal proceedings.

3.2 The Board agrees with the findings in the contested decision that none of the objections for lack of inventive step based on E2 (DE102005045601 A1) or E3 (DE3411015A1), each combined with the skilled person's common general knowledge, renders the subject-matter of claims 1 or 16 as granted obvious. None of the arguments submitted by opponent 1 with letter dated 7 April 2015 (see sections II.3.1 and II.3.2) convinced the Board.

In particular, the Board agrees with the contested decision that E2 combined with the general knowledge exemplified by E3 (see point 3.2.1) does not render obvious features M8 and M9. The technical problem to be solved in view of the teaching of E2 is to improve the test coverage of the system of E2. When considering E3, no reference value for the input parameter is derived

from the sequence of image data. Although E3 does disclose feature M6 (shift register RS in the figures) to generate a test code, instead of converting the test code into a reference value for the input parameter, a reference code is derived from the actual input parameter and a comparison is based on the generated test code and the derived reference code rather than on input parameter values according to feature M9.

Starting from E3, features M8 and M9 are not disclosed for the same reasons. The Board agrees with the contested decision that even when considering performing a comparison of the actual input parameter value with a value derived from the obtained test code, it was not obvious how this would have to be achieved with the system of E3. Indeed, the reference code memory (VS1) of E3 is controlled by the computer which, however, cannot be involved in view of the problem to be solved. Moreover, the data organisation of said memory (VS1) is also not explicitly described in E3 and it would have to be used in a different way for this approach. As a consequence, the skilled person would have to conceive a new hardware arrangement and a new data structure to modify E3's system to arrive at the claimed invention. The Board agrees with the contested decision that all these considerations taken together cannot be considered to be obvious.

3.3 The objections under Article 100(a) EPC raised in the contested decision and put forward by opponent 1 therefore do not prejudice the maintenance of the patent as granted.

Requirements under Article 100(b) EPC

4. The contested decision held that Article 100(b) EPC did not prejudice the maintenance of the patent as granted. The Board agrees with the reasons given (see point 3.3).

With regard to an original disclosure for features M8 and M9, reference is made to point 2.4.2 above. The Board does not concur with the arguments of opponent 1 to the contrary submitted with letter dated 7 April 2015.

The objections under Article 100(b) EPC put forward by opponent 1 therefore do not prejudice the maintenance of the patent as granted.

5. Since none of the objections under Articles 100(a) and (b) EPC prejudices the maintenance of the patent as granted (main request), the Board does not have to deal with the auxiliary requests.

As both oppositions were withdrawn and the patentee is the only party in the appeal proceedings, a decision can be taken in writing without the need for oral proceedings.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is maintained as granted.

The Registrar: The Chairman:

T. Buschek W. Chandler

Decision electronically authenticated