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**Datasheet for the decision
of 10 October 2019**

Case Number: T 1212/15 - 3.4.03

Application Number: 08747509.1

Publication Number: 2156418

IPC: G07F11/58, G07F11/60, A61J7/00,
G06F19/00

Language of the proceedings: EN

Title of invention:
AUTOMATED MEDICATION HANDLING SYSTEM

Applicant:
CareFusion 303, Inc.

Headword:

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

Keyword:
Novelty - main request (no)
Amendments - added subject-matter - auxiliary requests (yes)

Decisions cited:

Catchword:



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Case Number: T 1212/15 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 10 October 2019

Appellant: CareFusion 303, Inc.
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San Diego, CA 92130 (US)

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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 18 December
2014 refusing European patent application No.
08747509.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Eliasson
Members: S. Ward
T. Bokor

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division refusing European patent application No. 08 747 509 on the grounds that:
- the subject-matter of the main request was not new within the meaning of Article 54 EPC and did not involve an inventive step within the meaning of Article 56 EPC;
 - the subject-matter of auxiliary requests 1 and 2 did not meet the requirements of Article 123(2) and Rule 137(5) EPC and did not involve an inventive step within the meaning of Article 56 EPC; and
 - the subject-matter of auxiliary request 3 did not meet the requirements of Article 123(2) and Rule 137(5) EPC.
- II. The appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the main request, as rejected by the Examining Division, or on the basis of auxiliary requests 1-3 filed with the statement of grounds of appeal.
- III. The following documents are referred to:
- D1: US 5 468 110
- IV. (i) Claim 1 of the main request reads as follows:
- "A system (50) for managing medications in a care facility, comprising:
an identification device (70) that identifies
individual single-dose containers (56), each single-*

dose container (56) containing a single dose of a medication; and
a processor (51) configured to maintain information on the locations of the individual single-dose containers (56);
wherein the single-dose containers comprise an identifier (57) that provides information about the medication within the container;
the system being characterized in that the processor (51) is provided for keeping track of, and repositioning, each single-dose container (56) within the system (50)."

(ii) Claim 1 of auxiliary request 1 reads as follows:

"A system (50) for managing medications in a care facility, comprising:
an identification device (70) that identifies individual single-dose containers (56), each single-dose container (56) containing a single dose of a medication; and
a processor (51) configured to maintain information on the locations of the individual single-dose containers (56);
a single-dose dispenser (58) for storing and dispensing the single-dose containers (56);
a storage unit (62); and
a dispenser (64);
wherein the single-dose containers comprise an identifier (57) that provides information about the medication within the container;
the system being characterized in that the processor (51) is provided for keeping track of, and repositioning, each single-dose container (56) between the single-dose dispenser (58) and the storage unit (62), and the processor is configured (i) to monitor

expiration dates of the medications, (ii) to instruct the system to move a first medication nearing an expiration date of the first medication to the dispenser (64), bypassing at least one of the single-dose dispenser (58) and the storage unit (62) to increase the likelihood of using the first medication prior to the expiration date, and (iii) to instruct the system to retrieve and remove expired medications."

(iii) Claim 1 of auxiliary request 2 reads as follows:

*"A system (50) for managing medications in a care facility, comprising:
an identification device (70) that identifies individual single-dose containers (56), each single-dose container (56) containing a single dose of a medication; and
a processor (51) configured to maintain information on the locations of the individual single-dose containers (56);
a single-dose dispenser (58) for storing and dispensing the single-dose containers (56);
a storage unit (62);
a dispenser (64); and
a transport robot (60) configured to convey the single-dose containers (56) between the single-dose dispenser (58) and the storage unit (62);
wherein the single-dose containers comprise an identifier (57) that provides information about the medication within the container;
the system being characterized in that the processor (51) is provided for keeping track of, and repositioning, each single-dose container (56) within the system (50), and the processor is configured (i) to monitor expiration dates of the medications, (ii) to instruct the transport robot (60) to move a first*

medication nearing an expiration date of the first medication to the dispenser (64), bypassing the storage unit (62) to increase the likelihood of using the first medication prior to the expiration date, and (iii) to instruct the system to retrieve and remove expired medications."

(iv) Claim 1 of auxiliary request 3 reads as follows:

*"A system (50) for managing medications in a care facility, comprising:
an identification device (70) that identifies individual single-dose containers (56), each single-dose container (56) containing a single dose of a medication; and
a processor (51) configured to maintain information on the locations of the individual single-dose containers (56);
a single-dose dispenser (58) for storing and dispensing the single-dose containers (56);
a storage unit (62);
a dispenser (64); and
a transport robot (60) configured to convey the single-dose containers (56) between the single-dose dispenser (58) and the storage unit (62);
wherein the single-dose containers comprise an identifier (57) that provides information about the medication within the container;
the system being characterized in that the processor (51) is provided for keeping track of, and repositioning, each single-dose container (56) within the system (50), and the processor is configured (i) to monitor expiration dates of the medications, (ii) to instruct the transport robot (60) to move a first medication nearing an expiration date of the first medication to the dispenser (64), bypassing the storage*

unit (62) to increase the likelihood of using the first medication prior to the expiration date, and (iii) to instruct the system to retrieve and remove expired medications, and
the single-dose dispenser (58) comprises a container track (110), the container track comprising a plurality of single portions (112), each of the plurality of single portions configured to retain respective ones of the medications, the plurality of single portions interlinked; and
the single-dose dispenser (58) comprises a rack (122) comprising a dispensing arc (124), the container track configured to move along the rack, the single portions configured to keep respective ones of the medications within the single portions when the single portions are not at the dispensing arc."

V. The appellant's arguments, insofar as they are relevant to the present decision, may be summarised as follows:

The present invention provided an automated medication handling system, whereas that of D1 required manual sorting. In D1, if the wrong medicine package was picked, or the medicine had expired, then picking means 38 would place the package in a reject or return area, and a "pharmacy technician will then manually sort the drugs in the reject area, removing expired drugs and placing the others in the supply rack in order that they might be returned to their correct location in the system." Hence, repositioning the drug required the drug to exit the system to be manually sorted, and then to re-enter the system. The processor of D1 did not, therefore, reposition the drug within the system.

The amendments to claim 1 of auxiliary request 1 were supported by at least page 9, line 15 to page 10, line

6 as originally filed. The assertion in the contested decision that claim 1 contravened Article 123(2) EPC was invalid as claim 1 now recited "a dispenser (64)". Claim 1 of auxiliary request 1 was also novel and inventive.

Auxiliary requests 2 and 3 included amendments which further clarified and added additional limitations to the amendments of auxiliary request 1.

Reasons for the Decision

1. The appeal is admissible.
2. In the statement of grounds of appeal, the appellant made a conditional request for oral proceedings. Following a communication from the Board, the appellant, in a letter dated 10 September 2019, stated (only) the following:

"We would kindly like to inform the Board that we do not intend to participate in the oral proceedings scheduled for September 17, 2019."

Such a statement is normally treated as equivalent to a withdrawal of the request for oral proceedings, and the Board therefore exercised its discretion to cancel the oral proceedings and to issue the present decision (see *Case Law of the Boards of Appeal, 9th edition 2019, III.C.4.3.2*).

3. *Main request: Novelty*

3.1 The Examining Division found that the subject-matter of claim 1 of the main request lacked novelty over D1. The appellant has not contested that the preamble of claim 1 is disclosed in D1. The characterising part reads:

"the system being characterized in that the processor (51) is provided for keeping track of, and repositioning, each single-dose container (56) within the system (50)".

3.2 The Board takes the phrase "is provided for" to mean that the processor is programmed or adapted so that both of the recited functions ("keeping track of" and "repositioning") are carried out under its control.

Moreover, "keeping track of" each container in the system necessarily implies a capacity not just for data processing, but for maintaining some sort of record, for example, in a database stored in a memory, and the Board therefore understands the claimed term "processor" to be used in a general sense to include such data storage.

3.3 D1 discloses a system for transporting drugs in packages 14, each containing a single dose of medicine (column 4, lines 37-39). The packages of D1 therefore correspond to the claimed "single-dose containers".

3.4 Concerning the first function of the claimed processor ("keeping track of"), D1 discloses that a "picking means 38 is controlled by a computer 24, or local area network of computers, having a database. The database has the order to be filled and a record of the predetermined locations 18 of each different product in the storage rack 12" (column 6, lines 2-6). D1 therefore discloses a processor (understood in the

above sense) adapted for keeping track of each single-dose container within the system.

- 3.5 Concerning the second function of the claimed processor ("repositioning"), the picking means 38 is guided by the computer 24 to pick a package 14 in the storage rack 12, and to deliver it to a container (patient box) 36 located on conveyor 34 (column 5, line 63 to column 6, line 21). This constitutes a first type of repositioning of single-dose containers within the system (from the storage rack 12 to the conveyor 34) under the control of the processor.
- 3.6 In addition, packages (either new or returned) may be manually placed on a supply/return rack 20, and a program causes the picking means to pick packages from the supply/return rack and move them to the storage racks 12 (column 7, lines 17-44; and column 11, line 41 to column 12, line 35). This constitutes a second type of repositioning of single-dose containers within the system (from the supply/return rack 20 to the storage rack 12) under the control of the processor.
- 3.7 The Board accepts that D1 discloses that the (new or returned) packages may be positioned manually in the supply racks, but this is not relevant.

Claim 1 does not require that the system is *entirely* automated or that the processor controls *every* movement of the single-dose containers within the system. It is merely required that one of the functions of the processor is repositioning single-dose containers within the system, and, as shown above, D1 discloses at least two examples of this feature.

3.8 The subject-matter of claim 1 of the main request is therefore not new within the meaning of Articles 52(1) and 54 EPC.

4. *Auxiliary Request 1: Article 123(2) EPC*

4.1 Claim 1 of auxiliary request 1 comprises *inter alia* the following feature:

"the processor is configured ... (ii) to instruct the system to move a first medication nearing an expiration date of the first medication to the dispenser (64), bypassing at least one of the single-dose dispenser (58) and the storage unit (62) to increase the likelihood of using the first medication prior to the expiration date".

4.2 The appellant cites lines 15-23 on page 9 as the basis for the above feature (the term "bypassing" occurs nowhere else in the application). Three examples (only) of such bypassing are set out as follows:

(a) *"For example, in some embodiments, the transport robot 60 is configured to convey the single-dose containers 56 from the drug packager 54 directly to the storage device 62, completely bypassing the single-dose dispenser 58."*

(b) *"In yet other embodiments, the transport robot 60 is configured to convey the single-dose containers 56 from the drug packager 54 directly to the hand-carried dispenser 64, thus bypassing both the single-dose dispenser 58 and the storage device 62."*

(c) In some embodiments, the transport robot 60 is configured to convey the single-dose containers 56 from the single-dose dispenser 58 to the hand-carried dispenser 64, thus bypassing the storage device 62."

4.3 Example (a) is not relevant, as it does not relate to moving the first medication to the dispenser (i.e. the hand-carried dispenser 64), as in claim 1, but rather to the storage device 62.

Examples (b) and (c) disclose moving the single-dose containers to the hand-carried dispenser 64 either:
- **from the drug packager 54** (hence, bypassing both the single-dose dispenser 58 and the storage device 62); or
- **from the single-dose dispenser 58** (hence, bypassing the storage device 62).

4.4 Claim 1, by contrast, defines that the processor is configured to instruct the system to move a first medication to the dispenser, with no limitation being placed on the location from which the single-dose dispenser is to be thus moved.

As a result, claim 1 comprises embodiments in which the processor is configured to instruct the system to move a first medication to the dispenser (bypassing at least one of the single-dose dispenser and the storage unit) from locations other than the drug packager 54 or single-dose dispenser 58. Such embodiments have no basis in the application as originally filed.

4.5 Claim 1 of auxiliary request 1 does not, therefore, meet the requirements of Article 123(2) EPC.

5. *Auxiliary Request 2: Article 123(2) EPC*

5.1 Claim 1 of auxiliary Request 2 comprises the feature:

"the processor is configured ... (ii) to instruct the transport robot (60) to move a first medication nearing an expiration date of the first medication to the dispenser (64), bypassing the storage unit (62) ...".

5.2 As with auxiliary request 1, the only potential basis in the application as originally filed would be examples (b) and (c) cited above under point 4.2. However, as noted above, these relate to conveying the single-dose containers from specifically disclosed locations ("the drug packager 54" or "the single-dose dispenser 58") to the hand-carried dispenser 64. Claim 1 of auxiliary request 2 does not, therefore, meet the requirements of Article 123(2) EPC for the reasons given above in relation to claim 1 of auxiliary request 1, *mutatis mutandis*.

6. *Auxiliary Request 3: Article 123(2) EPC*

6.1 Claim 1 of auxiliary request 3 also comprises the feature referred to above under point 5.1, and hence claim 1 of auxiliary request 3 does not meet the requirements of Article 123(2) EPC for the reasons given above in relation to claim 1 of auxiliary request 2.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated