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**Datasheet for the decision
of 13 March 2020**

Case Number: T 2131/15 - 3.5.02

Application Number: 03724161.9

Publication Number: 1493135

IPC: G08B13/24

Language of the proceedings: EN

Title of invention:

System and method for managing assets using a portable combined electronic article surveillance system and barcode scanner

Applicant:

Sensormatic Electronics, LLC

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - main request and first and second auxiliary requests - allowable (no)



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Case Number: T 2131/15 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 13 March 2020

Appellant: Sensormatic Electronics, LLC
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Representative: Hafner & Kohl
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 9 June 2015
refusing European patent application No.
03724161.9 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 lies from the decision of the examining division to refuse European patent application No. 03 724 161.9.
- II. The examining division found that the subject-matter of the main request and of the first and second auxiliary requests pending before it lacked an inventive step.
- III. The appellant requested that the decision under appeal be set aside and that a patent be granted based on the claims of their main request or of their first or second auxiliary request, all filed together with the statement setting out the grounds of appeal. None of the requests underlying the contested decision has been maintained.
- IV. In a communication under Article 15(1) RPBA the board informed the appellant that it tended to the conclusion that all requests contravened Article 123(2) EPC.
- V. With letter dated 26 February 2020 the appellant informed the board that they would not attend the oral proceedings scheduled for 13 March 2020. No arguments were presented regarding the objections under Article 123(2) EPC raised by the board in the communication under Article 15(1) RPBA.
- VI. Oral proceedings were held before the board on 13 March 2020 in the absence of the appellant, as indicated.

VII. Independent claim 1 according to the main request reads as follows:

" A method in a retail store of managing an asset carrying a barcode and an EAS tag, the method comprising:

- a. - providing a point of sale (POS) network (100) in said retail store comprising a processor (102, 604, 704, 710, 804) configured for accessing a database (114, 606, 706, 806);
- b. - providing a portable EAS/Scanner (108, 200, 503) connected to said POS network (100) [sic] communication with said processor (102, 604, 704, 710, 804), said EAS/Scanner (108, 200, 503) comprising an EAS system (204) for modifying an activation state of said EAS tag and a barcode scanner (202, 546) for scanning said barcode;
- c. - providing said portable EAS/scanner (108, 200, 503) with a bidirectional communication with said processor (102, 604, 704, 710, 804) of said POS network (100);
- d. - providing said EAS/scanner (108, 200, 503) to be configured for detecting the activation state of an EAS tag or marker on an article

characterized in

- e. - providing said bidirectional communication between said EAS/scanner (108, 200, 503) and said processor wireless, wherein said connected EAS/scanner (108, 200, 503) is entirely portable within said retail store;
- f. - providing said EAS/scanner (108, 200, 503) with a user interface;
- g. - locating an active tag or marker among a customer's items being already purchased with said EAS/scanner (108, 200, 503) without automatic immediate deactivation, remote from the POS station, in a first step;

- h. - scanning the barcode of said located EAS tag or marker using said EAS/Scanner (108, 200, 503) remote from the POS station and transmitting the barcode information through wireless connection to the POS network and sending a query to obtain asset information for the article in a second step;
- i. - assessing asset information in said database from said portable EAS/scanner (108, 200, 503) in response to said signal representative of said barcode and displaying same on said user interface on said EAS/scanner to determine if the article was properly purchased in a third step and
- k. - deactivating said EAS tag after said asset information has been displayed on said interface, if the article was properly purchased in a fourth step."

Independent claim 1 according to the first and second auxiliary requests is also directed to a method "in a retail store" and comprises inter alia the expressions "active tag or marker", "providing said portable EAS/scanner with a bidirectional communication", "providing said EAS/scanner to be configured for detecting the activation state of an EAS tag", "providing said bidirectional communication ...wireless", and "providing said EAS/scanner with a user interface" as well as the disclaimer "without automatic immediate deactivation" which were found to contravene Article 123(2) EPC in the board's communication under Article 15(1) RPBA.

Reasons for the Decision

1. Admissibility of the appeal

The appeal was filed in due time and form and sufficiently substantiated. Consequently, the appeal is admissible.

2. Amendments - Article 123(2) EPC

All requests on file include amendments contravening Article 123(2) EPC.

All requests include the features "active tag" and "marker". However, there is no original disclosure for either of those features without the prefix "EAS".

Further, according to the original disclosure of the application, the concept of locating an article with an active EAS tag is linked to a previous issue of an alarm caused by said active EAS tag. Similarly, the deactivation of an EAS tag is carried out by a security associate. However, the former of these additional aspects is not claimed at all and the latter is claimed only in the first auxiliary request.

In addition, the disclaimer "without automatic immediate deactivation" is not originally disclosed. The paragraph on page 10 cited by the appellant in this respect discloses two distinct alternatives of deactivating an EAS tag. However, both alternatives

involve the action of a security associate. The adjectives "automatic" and "immediate" are not disclosed in the context of deactivation. Thus, the disclaimer added to independent claim 1 according to all pending requests is a generalisation of what is disclosed in the application. Further, document D6 is not an accidental anticipation in the sense of the decision of the Enlarged Board of Appeal G 1/03 which might allow the introduction of such an undisclosed disclaimer.

Moreover, all the method steps defining a modification of the EAS/scanner used with the claimed method are not originally disclosed. These are "providing said portable EAS/scanner with a bidirectional communication", "providing said EAS/scanner to be configured for detecting the activation state of an EAS tag", "providing said bidirectional communication ...wireless", and "providing said EAS/scanner with a user interface". In addition, all the modifications are defined to take place "in a retail store", which is not covered by the original disclosure, since all of these steps seem to relate in fact to the manufacture of the EAS/scanner, not to its use.

Even further, in all requests, the step of transmitting, which previously specified that what was transmitted was a signal representative of the barcode, now refers only to "barcode information". Given that the previous wording is retained in the following feature of the claim, this wording suggests that these are two different things, for which the application provides no basis. Moreover, this signal also formed part of originally filed claim 1 and the description of the embodiments including the drawings relies on this

signal. Therefore, there is no basis in the originally filed documents for the amendment of this feature.

Consequently, all requests on file contravene Article 123(2) EPC for multiple reasons.

3. Conclusion

Since none of the requests on file is allowable, the board cannot accede to the appellant's requests.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated