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Datasheet for the decision of 16 May 2019

Case Number: T 2167/15 - 3.5.05

Application Number: 01930171.2

Publication Number: 1302875

IPC: G06F19/00

Language of the proceedings: EN

Title of invention:
MEASUREMENT DATA PROCESSING SYSTEM

Patent Proprietor:
ARKRAY, Inc.

Opponent:
Roche Diagnostics GmbH

Headword:
Measuring mode/ARKRAY

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

Keyword:
Novelty - (no)

Decisions cited:

Catchword:

Europäisches Patentamt
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Beschwerdekammern

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Case Number: T 2167/15 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 16 May 2019

Appellant: (Opponent)	Roche Diagnostics GmbH Sandhoferstr. 116 68305 Mannheim (DE)
Representative:	Peterreins Schley Patent- und Rechtsanwälte Hermann-Sack-Strasse 3 80331 München (DE)
Respondent: (Patent Proprietor)	ARKRAY, Inc. 57, Nishiaketa-cho Higashikujo Minami-ku Kyoto-shi Kyoto 601-8045 (JP)
Representative:	Dehns St. Bride's House 10 Salisbury Square London EC4Y 8JD (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 7 July 2015 concerning maintenance of the European Patent No. 1302875 in amended form.**

Composition of the Board:

Chair	A. Ritzka
Members:	E. Konak
	F. Blumer

Summary of Facts and Submissions

I. The appeal was filed by the opponent against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 2, the patent in suit met the requirements of the EPC.

II. The opposition division decided that the subject-matter of the claims as amended during the opposition proceedings did not extend beyond the content of the application as filed and involved an inventive step.

III. Oral proceedings were held before the board.

IV. Several auxiliary requests were filed by the respondent (patent proprietor) during the appeal proceedings which were all withdrawn at the oral proceedings.

The appellant (opponent)'s final request was that the decision under appeal be set aside and that the patent be revoked.

The respondent's final request was that the appeal be dismissed.

V. Claim 1 of the patent in suit reads as follows:

"A measurement data processing system comprising:
a personal measuring device (1); and
a data processing device (2);
characterised in that the personal measuring device is arranged to measure and store data in an internal memory (13) when in a state disconnected from the data processing device, and
the data processing device is arranged to fetch and process the data from the personal measuring device and

then output a result of the processing when in a state connected to the personal measuring device via a cable (3) when triggered by turning on a power of the measuring device (1) after the personal measuring device (1) is connected to the data processing device (2) or by connecting the measuring device (1) whose power has been turned on to the data processing device (2), wherein
the personal measuring device is further arranged to transmit to the data processing device a signal for judging whether the personal measuring device is connected to the data processing device, and to set an operation mode to be a data transmitting mode if a response to the signal is returned from the data processing device, and to set the operation mode to be a data measuring mode if the response is not returned, and
after returning the response to the signal from the personal measuring device, the data processing device is arranged to start fetching the data from the personal measuring device."

VI. In the present decision, reference is made to the following document:

D2: EP 0 996 075 A2

Reasons for the Decision

1. In its reply to the appellant's statement setting out the grounds of appeal, the respondent pointed out that claim 1 set out two options to trigger the data processing device to fetch data from the personal measuring device, namely: (i) turning on the power of the measuring device after the personal measuring device is connected to the data processing device, and

(ii) connecting the measuring device whose power has been turned on to the data processing device. It argued that option (i) is novel over D2. The board, however, is persuaded by the appellant's counter-argument that these two options are two alternatives separated with the conjunction "or" in claim 1 and, given that the disclosure in D2, paragraph [0102] is novelty-destroying for option (ii), it is immaterial for assessing novelty whether option (i) is disclosed in D2.

2. The respondent argued at the oral proceedings that claim 1 requires the personal measuring device to transmit a signal to the data processing device and to receive from the data processing device a response to the signal as a prerequisite for the step of setting the operation mode of the personal measuring device. In the system of D2, any signal flow was in the opposite direction. Paragraph [0101] clearly stated that the microprocessor transmits a request signal to the health measuring devices, and ensuing paragraphs [0102], [0103] or [0104] did not mention any signal being transmitted from the personal measuring device. The connection described in paragraph [0103] and depicted in figure 21 was a physical connection in which detecting switches and a signal line were provided. The detection of the connection switched the personal measuring device directly into transmitting mode, in particular without a handshake as claimed in claim 1, comprising a signal for judging and the response to it. However, the appellant argued convincingly, that claim 1 is not limited to a specific type of signal being transmitted from the personal measuring device to the data processing device, nor to a specific type of response being returned. The signal in question might be any simple electrical signal. D2, paragraph [0104]

discloses that the communication of data can automatically be started "after a confirmation of the reliable connection of the two ends of the communication cable", which means that the health measuring devices start transmitting data only after both ends of the cable, i.e. the health measuring devices and the microprocessor, perform an electrical handshake. As the respondent explained at the oral proceedings that the "modes" mentioned in claim 1 mean running certain algorithms, this disclosure in paragraph [0104] is interpreted in the sense that the health measuring devices of D2 transmitting data to the terminal device would be set to "a data transmitting mode", as required by claim 1.

3. Therefore, the features of claim 1 that the respondent argued to be new are indeed disclosed by D2.

4. In the contested decision, the opposition division found the subject-matter of claim 1 to be new over D2 by virtue of the feature "*to set the operation mode to be a data measuring mode if the response is not returned*", arguing that in D2 "the response signal will always be returned". The board is not convinced by this finding. It is a matter of fact that if two devices, for whatever reason, cannot establish a reliable connection, a response signal to a connection attempt cannot be returned.

5. In conclusion, the subject-matter of claim 1 is not new under Article 54(1) and (2) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chair:

K. Götz-Wein A. Ritzka

Decision electronically authenticated