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**Datasheet for the decision  
of 21 January 2020**

**Case Number:** T 1720/16 - 3.4.03  
**Application Number:** 03022730.0  
**Publication Number:** 1408459  
**IPC:** G07F7/02, B60S5/02, B67D5/14,  
G06F3/033, G07F13/02  
**Language of the proceedings:** EN

**Title of invention:**

Secure controller of outdoor payment terminals in compliance  
with EMV specifications

**Applicant:**

GILBARCO ITALIA S.R.L.

**Headword:**

**Relevant legal provisions:**

EPC 1973 Art. 84, 113(1)  
EPC R. 103(1) (a)  
RPBA 2020 Art. 15(3), 15(6)

**Keyword:**

Reimbursement of appeal fee - (no)  
Remittal to the department of first instance - (no)  
Claims - clarity (no)

**Decisions cited:**

T 1888/12, T 0783/05

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1720/16 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 21 January 2020**

**Appellant:** GILBARCO ITALIA S.R.L.  
(Applicant) Via de Cattani, 220/G  
50145 Firenze (FI) (IT)

**Representative:** Black, Diego  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 1 February 2016  
refusing European patent application No.  
03022730.0 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** T. Häusser  
**Members:** M. Stenger  
G. Decker

## Summary of Facts and Submissions

- I. The appeal concerns the decision of the Examining Division to refuse European patent application no. 03022730. The section "Reasons for the decision" of the decision under appeal contains arguments relating to Articles 123(2), 83 and 84 EPC. Further, some remarks with respect to Article 56 EPC are made in an additional section labeled "Obiter Dictum".
- II. With the grounds of appeal, the appellant requested that the contested decision be set aside and that a patent be granted on the basis of a main request or of one of auxiliary requests 1 to 4, all filed with the grounds of appeal.
- III. In a communication preparing the oral proceedings, the Board issued a preliminary opinion with respect to procedural issues as well as to Articles 84, 83, 123(2) and 56 EPC.
- IV. With a letter dated 8 January 2020, the appellant/applicant indicated that neither the applicant nor the representative would be attending the oral proceedings. The preliminary opinion of the Board was not commented upon.
- V. Claim 1 of the main request has the following wording:

*A device for the control and the transmission of data in self-service machines, capable of controlling the operation of the self-service machine and of performing payment transactions in compliance with EMV specifications, the device of the kind including a smart card reader unit (1) with a smart card reader, a keypad unit (2) with a keypad for entering*

*alphanumeric characters, and a display unit (3) with a display for displaying the information transmitted and/or received, characterised in that*

- a) each of the units has a microprocessor (14) with an associated CPU (5) and a SRAM (13),*
- b) the CPU in one of the units works in the multiuser / multitasking mode with applications for electronic funds transfer (EFT) and self-service machine control occupying different and independent areas in that CPU and are called independently and asynchronously from each other,*
- c) the unit with the CPU that works in the multiuser/ multitasking mode has in the associated SRAM (13) a master software key (12) for coding communication with an external device by the CPU of that unit and different individual software keys (10, 11) for coding communication between the CPU of that unit and the CPUs of each of the other units in that different communication paths between the specified units utilize different software keys for encrypting communication on such communication paths,*
- d) each of the units has its own casing and tamper detection sensors, and*
- e) each microprocessor has associated tamper detection logic reading the tamper detection sensors of the associated unit for determining if tampering has occurred with the unit, wherein the microprocessor (14) of an unit will destroy the software keys (10, 11, 12) in the associated SRAM (13) if the tamper detection logic of that microprocessor (14) determines that tampering has occurred with the unit.*

VI. The wording of claim 1 of auxiliary request 1 differs from the wording of claim 1 of the main request in that feature b) is worded as follows:

*b) the CPU in one of the units works in the multiuser / multitasking mode with applications for handling the different secure data transfers (sales transactions, measured data, secure software updates, etc.) occupying different and independent areas in that CPU and are called independently and asynchronously from each other,*

VII. The wording of claim 1 of auxiliary request 2 differs from the wording of claim 1 of auxiliary request 1 in that features b) and c) are worded as follows:

*b) the CPU in the display unit works in the multiuser/ multitasking mode with applications for handling the different secure data transfers (sales transaction, measured data, secure software updates, etc.) occupying different and independent areas in that CPU and are called independently and asynchronously from each other,*

*c) the CPU in the display unit is part of a CPU card and has in the associated SRAM (13) a master software key (12) for coding communication with an external device by that CPU and different individual software keys (10, 11) for coding communication between that CPU and the CPUs of each of the other units in that different communication paths between the specified units utilize different software keys for encrypting communication on such communication paths,*

VIII. The wording of claim 1 of auxiliary request 3 differs from the wording of claim 1 of auxiliary request 2 in that feature c) is worded as follows:

*c) the CPU in the display unit is part of a CPU card and has in the associated SRAM (13) a master software*

*key (12) for coding communication with an external device by that CPU and different individual software keys (10, 11) for coding communication between that CPU and the CPUs of each of the other units in that different communication paths between the specified units utilize different software keys for encrypting communication on such communication paths in accordance with Triple DES MK/SK coding,*

- IX. The wording of claim 1 of auxiliary request 4 differs from the wording of claim 1 of auxiliary request 3 in that features c) and e) are worded as follows:

*c) the CPU in the display unit is part of a CPU card and has in the associated SRAM (13) a master software key (12) for coding communication with an installation controller by that CPU and different individual software keys (10, 11) for coding communication between that CPU and the CPUs of each of the other units in that different communication paths between the specified units utilize different software keys for encrypting communication on such communication paths in accordance with Triple DES MK/SK coding,*

*e) each microprocessor has associated tamper detection logic monitoring the tamper detection sensors of the associated unit for determining if tampering has occurred with the unit, wherein the microprocessor (14) of an unit will destroy the software keys (10, 11, 12) in the associated SRAM (13) if the tamper detection logic of that microprocessor (14) determines that tampering has occurred with the unit.*

## **Reasons for the Decision**

1. The appeal is admissible.

2. Procedural issues

2.1 Oral proceedings in the absence of the appellant

According to Article 15(3) RPBA 2020, the Board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of a party duly summoned who may then be treated as relying on its written case.

In the present case, the appellant chose not to comment on the preliminary opinion issued by the Board in preparation of the oral proceedings. The Board thus concluded that the case was ready for decision at the end of the oral proceedings and the Chair announced the decision orally according to Article 15(6) RPBA 2020.

2.2 Reimbursement of the appeal fee, remittal to the department of first instance

The appellant alleged in a plurality of passages in the grounds of appeal (see page 3, last paragraph; page 4, fifth paragraph; page 12, second paragraph) that its right to be heard under Article 113(1) EPC 1973 had been violated.

2.2.1 It is true that a decision which fails to take into account the arguments submitted by a party and which is based on a ground on which the party had no opportunity to present its comments, contravenes Article 113(1) EPC 1973, thereby constituting a substantial procedural violation.



2.2.2 However, according to Rule 103(1)(a) EPC the appeal fee may only be reimbursed *in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable*. None of these two conditions applies in the present case, whereby the appeal fee cannot be refunded on that basis, irrespective of whether the alleged procedural violation has occurred or not.

Therefore, the Board does not need to decide whether the alleged violations of the appellant's right to be heard have actually been committed.

2.2.3 Moreover, remitting the present case to the Examining Division would have been at odds with procedural economy in view of the filing date of the application more than 15 years ago (9 October 2003).

3. Article 84 EPC 1973

The independent claims of all requests define in the first paragraph that the claimed device is capable of

*- performing payment transactions in compliance with EMV specifications.*

EMV (Europay, Mastercard, Visa) specifications have changed over time. For example, the standards "EMV'96" (in its version 3.1.1) and "EMV2000" have been published in 1998 and 2000, respectively. Thus, some versions of the EMV standard were published before the priority date of the present application, whereas the presently valid version became effective after publication of the patent application.

Consequently, different versions of the EMV standard have been valid at different points in time. Thus, the meaning of the expression *in compliance with EMV specifications* has already changed since the priority date of the present application and might possibly further change in the future. The Board notes that the application itself refers to the *future* EMV standard (see paragraph [9] of the application as published).

The expression *in compliance with EMV specifications* without a precise indication of the version of the EMV standard referred to is thus not suitable to define technical matter in an unambiguous manner. Its use in the independent claims of all requests therefore renders these claims unclear, contrary to the requirements of Article 84 EPC 1973.

The Board notes that this finding is in line with Board of Appeal decisions T 1888/12 (see point 2.1 of the Reasons) and T 0783/05 (see point 2. of the Reasons). Similar considerations also apply when it is attempted to define the claimed subject-matter using trade marks (see *Case Law of the Boards of Appeal of the European Patent Office*, 9th edition 2019, section II.A.3.1).

4. The Board notes that although an objection concerning lack of clarity of the term *EMV specifications* was comprised in the Board's communication preparing the oral proceedings (see point 3.2), the appellant did not comment on it.
5. Since none of the requests on file fulfills the requirements of the EPC, the appeal must fail.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

T. Häusser

Decision electronically authenticated