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Datasheet for the decision of 15 January 2020

Case Number: T 1196/17 - 3.4.02

Application Number: 13190334.6

Publication Number: 2730896

IPC: G01D18/00

Language of the proceedings: EN

Title of invention:
Variable scale sensor

Applicant:
Honeywell International Inc.

Headword:

Relevant legal provisions:
EPC Art. 84, 123(2), 83
RPBA Art. 12(4)
RPBA 2020 Art. 12(2)

Keyword:
Main request - admissibility - sufficiently substantiated (no)
Auxiliary request - added subject-matter (yes) - clarity (no) - sufficiency of disclosure (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1196/17 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 15 January 2020

Appellant: (Applicant)	Honeywell International Inc. 115 Tabor Road Morris Plains, NJ 07950 (US)
Representative:	Haseltine Lake Kempner LLP Lincoln House, 5th Floor 300 High Holborn London WC1V 7JH (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 22 December 2016 refusing European patent application No. 13190334.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	R. Bekkering
Members:	C. Kallinger
	B. Müller

Summary of Facts and Submissions

I. The applicant lodged an appeal against the decision of the examining division refusing European patent application No. 13 190 334.6 because amendments made in the patent application did not meet the requirements of Article 123(2) EPC.

II. In the statement setting out the grounds of appeal dated 2 May 2017 the appellant requested to set aside the examining division's decision and to *"reinstate the patent either as granted* [sic]*, the Main Request, or as amended in the form of an Auxiliary Request*." The appellant filed amended claims 1 to 15 headed *"EP Auxiliary Claim Amendments"*, stated that the *"present submissions are based on what was already on file"* and, under the heading "REMARKS", provided arguments in support of the newly filed claims, inter alia, with respect to Article 123(2) EPC.

As a precaution, the applicant requested oral proceedings.

III. Claim 1 of the auxiliary request reads:

"1. A sensor assembly (10) for sensing a sensed parameter and for outputting a sensor assembly output signal (25), the sensor assembly (10) comprising:

a sense element (14) for sensing the sensed parameter, the sense element (14) providing a sense element output signal (12) that is related to the sensed parameter;

a control block (15), including:

an amplifier (30) having a programmable gain and a programmable offset;

a first input port (17) for receiving the sense element output signal (12);

a second input port (19) for receiving a scale input (27) adjustable by a user, the control block (15) adjusts the offset and the gain according to the scale input (27) to adjust a resolution of a sensor assembly output signal (25) within the sensor assembly output signal range;

an output port (70) for providing the sensor assembly output signal (25);

wherein the control block (15) is configured to take in the sense element output signal (12) via the first input port (17) and produce the sensor assembly output signal (25) at the output port (70), wherein the sensor assembly output signal (25) is calibrated such that a value of the sensor assembly output signal (25) outputted at the output port (70) is within a threshold value of an expected value of the sensor assembly output signal (25) for a sensed parameter regardless of the scale input (27) for the sensor, and the resolution of the sensor assembly output signal (25) at the output port (70) is determined, at least in part, by the scale input (27) received via the second input port (19); and

wherein the control block (15) produces the sensor assembly output signal (25) at a first resolution for a first scale input and at a second different resolution for a second different scale input; and

wherein the control block (15) produces the sensor assembly output signal (25) across a sense element output signal (12) range for the first scale input and across a sense element output signal (12) sub-range within the sense element output signal (12) range at the second different scale input."

IV. Together with the summons to oral proceedings the board issued a communication pursuant to Article 15 (1) RPBA in which the appellant was informed that the board interprets the appellant's statement in the grounds of appeal such that the appellant's main request is to set aside the examining division's decision and to grant a patent on the basis of the main request on which the examining division's decision is based, i.e. claims 1 to 14 filed in electronic form on 24 August 2016 (see section 16 of the decision).

Furthermore, the board informed the appellant about its preliminary opinion according to which, inter alia, the board intended not to admit the main request into the proceedings and the amended claims according to the auxiliary request did not meet the requirements of Articles 123(2), 84 and 83 EPC.

V. With a letter received on 9 January 2020 the appellant informed the board that it would not attend the oral proceedings scheduled for 15 January 2020. The appellant did not file any comments concerning the board's preliminary opinion as annexed to the summons.

VI. The appellant's requests are that the decision under appeal be set aside and a patent be granted on the basis of
- claims 1 to 14 of the main request on which the decision of the examining division was based, i.e. the claims filed on 24 August 2016 (main request), or
- claims 1 to 15 of the auxiliary request filed with the statement of grounds of appeal.

VII. On 15 January 2020 oral proceedings were held in the absence of the appellant. At the end of the oral proceedings the Chairman announced the decision of the board.

Reasons for the Decision

1. Main Request - Admissibility

The board does not admit the main request into the appeal proceedings.

1.1 No arguments in support of the main request have been provided with the statement of grounds of appeal. At the beginning of the section headed "REMARKS", it is expressly stated that the appellant *"provided amendments to the claims to address the support rejections*". The arguments provided in this section relate to the auxiliary request, i.e. the amended claims that were filed with the statement of grounds of appeal.

1.2 According to Article 12(2) RPBA, the statement of grounds of appeal shall contain a party's complete

case, set out why the decision under appeal should be reversed and specify expressly all the facts and arguments relied on. As the appellant did not provide any arguments with respect to the claims forming the basis of the appealed decision, the board is of the opinion, that the requirements of Article 12(2) RPBA are not met.

The appellant's statement that the *"present submissions are based on what was already on file"* is considered as a reference to previous submissions. According to established case law, the mere reference to previous submissions is however not sufficient to present a party's case. The statement of grounds of appeal must enable the board to understand immediately why the decision is alleged to be incorrect and on what facts the appellant bases its arguments, without first having to make investigations of its own (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, V.A.2.6.3 and -2.6.4).
Furthermore, the appellant's statement that this was due to an unexpected illness of the representative and that therefore, *"the patent attorney may wish to provide further reasoning in the near future"* cannot excuse the insufficient presentation of the party's case with respect to the main request already in the statement of grounds of appeal.

In conclusion, the main request does not fulfill the requirements set out in Article 12(2) RPBA and is therefore not taken into account according to Article 12(4) RPBA 2007.

2. Auxiliary request

2.1 Amendments

Contrary to the requirements of Article 123(2) EPC, the claims were amended in such a way that they contain subject-matter which extends beyond the content of the application as filed.

2.1.1 The applicant stated in the grounds of appeal that the amendments with respect to the claims of the main request were originally disclosed in paragraphs [0019] and [0021] of the A2 publication. The board notes that these paragraphs correspond to page 6, lines 1 to 13 and page 6, lines 22 to page 7, line 10 of the originally filed description.

2.1.2 The board is of the opinion that the following amendments which have been introduced in comparison to the main request are disclosed in the originally filed description:

- The feature "... *wherein the sensor assembly output signal (25) is calibrated such that a value of the sensor assembly output signal (25) outputted at the output port (70) is within a threshold value of an expected value of the sensor assembly output signal (25) for a sensed parameter regardless of the scale input (27) for the sensor,..*" can be found almost literally on page 6, lines 1 to 5;

- the clarification that the range and sub-range relate to the sense element output signal (12) can be found on page 7, lines 1 to 3.

2.1.3 However, with respect to further amendments of the claims (for which no basis has been indicated by the appellant in the statement of grounds of appeal), the board has the following objections:

- The board sees no original disclosure of the feature in claim 1 (emphasis by underlining has been added by the board) stating that *"... the control block (15) adjusts the offset and the gain according to the scale input (27) to adjust a resolution of a sensor assembly output signal (25) within the sensor assembly output signal range..."*.
- With respect to the features in claim 1 relating to *"... a first resolution for a first scale input and at a second different resolution for a second different scale input..."*, the board is of the opinion that the application as originally filed does not disclose *"a second different resolution"*. Furthermore, wherever the application refers to *"a second scale setting"* (see page 6, lines 17 to 21 and claim 4), this is always in connection with the specific embodiment comprising a memory and the use of different sub-sets of calibration for the first and second scale input. Therefore, even if these passages were taken as the originally filed disclosure, the amendments extract isolated features from a set of features originally disclosed in combination and would thus constitute an inadmissible intermediate generalization.

Corresponding arguments apply to independent method claim 11.

In conclusion, the board is of the opinion that the above listed amendments do not meet the requirements of Article 123(2) EPC.

2.2 Clarity

2.2.1 The examining division remarked *obiter* (see section III of its decision) that the expression *output signals* was used in a confusing manner.

The appellant did not provide any argument in this respect.

The board is of the opinion that the exemplary expressions listed by the examining division, i.e.
- sensor output signal 12 (V_{in}),
- amplified sensor output signal 12' (V_{out}) and
- sensor assembly output signal 25

are clearly distinct from one another. This is also reflected in the use of respective reference signs and can also be seen in figure 1, where the three signals are present at different locations in the sensing apparatus 10.

In addition, the description also uses these expressions and reference signs in a consistent way. Only at one instance (see page 5, lines 24 to 28) does the description mention a *"sensor assembly output signal"* with the reference number 12' (instead of 25). This is however only a minor inconsistency which does not render the claims unclear or unsupported by the description.

The board therefore comes to the conclusion that the expression *"output signal"* is clear and meets the requirements of Article 84 EPC.

2.2.2 However, with respect to further features of the claims, the board notes the following:

- Claims 1 and 11 refer to *"... a threshold value of an expected value of the sensor assembly output signal (25)..."*. It is however not clear how the *"expected value of the sensor assembly output signal"* is defined or where it stems from.

- Claim 2 defines to *"... adjust the offset to center the value of the sensed parameter within the sense element output signal sub-range ..."*. It is however not clear how the centering can be achieved by merely adjusting the offset of the amplifier (see also section 2.3 below).

- Apparatus claim 1 defines that the control block produces the sensor assembly output signal (25) at a first and a second resolution for first and second scale inputs. This feature therefore relates to a method of using the apparatus rather than clearly defining the apparatus in terms of its technical features. The intended limitations are therefore not clear from this claim.

- Claim 11 defines *"... outputting a second sensor assembly output signal (25) across a second range of the sensed parameter that is a sub-range of the first range of the sensed parameter..."*. However, as the first and second inputs can be chosen freely by a user, it is not clear how the second range should necessarily be a sub-range of the first range.

- Claim 12, which is dependent on claim 11, does not introduce any additional features with respect to

claim 11. The claims taken as a whole are therefore not concise.

- Claim 12 defines receiving of *"... an input that corresponds to a different user selected range of the sensed parameter..."*. It is not clear wether this input is identical with the second input referred to in claim 11 or relates to a further input.

- Claim 13 refers to the calibration of a *"sensor output signal"* whereas according to claim 11 the sensor assembly output signal is calibrated.

- Claim 13 defines a first sub-set of calibration parameters for *"the user selected range"* and a second sub-set of calibration parameters for a *"different user selected range"*. It is not clear how a predetermined set of calibration parameters can achieve the claimed calibration, no matter which range is selected by a user via the input.

The board therefore comes to the conclusion that the above mentioned claims do not meet the requirements of Article 84 EPC.

2.3 Sufficiency of disclosure

According to the description (see page 6, line 30 to page 7, line 1) and claim 2 of the auxiliary request, the value of the sensed parameter (see figure 2: approximately 3,5 V) is centered within the sense element output signal sub-range (see figure 2, right side: 3.0 V to 4.0 V). It is not apparent how this can be achieved by merely adjusting the offset of the

amplifier as claimed and described. The board is therefore of the opinion that the invention is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art as required by Article 83 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

S. Sánchez Chiquero R. Bekkering

Decision electronically authenticated