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**Datasheet for the decision
of 28 October 2021**

Case Number: T 1802/17 - 3.4.03

Application Number: 13725184.9

Publication Number: 2864968

IPC: G07F5/26, G07F13/02, G07F13/04,
G07F9/02

Language of the proceedings: EN

Title of invention:
APPARATUS FOR INVENTORY CONTROL

Applicant:
Anning, Bernard Edgar

Headword:

Relevant legal provisions:

EPC Art. 56, 97(1)
EPC R. 103(1) (a)

Keyword:

Inventive step - main request (yes)
Substantial procedural violation - violation of the right to
be heard (yes) - reimbursement of appeal fee (yes)

Decisions cited:

T 0763/04

Catchword:



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Case Number: T 1802/17 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 28 October 2021

Appellant: Anning, Bernard Edgar
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 2 March 2017
refusing European patent application No.
13725184.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Eliasson
Members: M. Papastefanou
T. Bokor

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division refusing the European patent application No. 13 725 184 (published as WO 2013/190253 A1) on the ground that neither the Main Request nor the First or Second Auxiliary Requests before it involved an inventive step within the meaning of Article 56 EPC.

II. Reference is made to the following prior art documents cited in the impugned decision:

D1: WO 02/42199 A1

D2: US 3,752,357

D3: US 3,722,650

D4: US 2003/0109956 A1

D5: WO 02/056265 A1.

III. The appellant (applicant) requests that the decision under appeal be set aside and that a patent be granted on the basis of the Main Request or one of the First and Second Auxiliary Requests, all filed with the grounds of appeal and corresponding to the respective requests underlying the impugned decision.

The appellant further requests reimbursement of the appeal fee under Rule 103(1)(a) EPC because of substantial procedural violations allegedly committed by the examining division.

IV. The board issued a communication under Rule 100(2) EPC expressing the preliminary opinion that the claims of the Main Request appeared to involve an inventive step and pointed out some clarity issues which prejudiced the grant of a patent. It also signalled that it was

minded to order the reimbursement of the appeal fee under Rule 103(1) (a) EPC as requested if the appeal was deemed allowable.

V. The appellant responded to this communication with a letter dated 5 May 2021, filing amended description and claims of the Main Request. The request for reimbursement of the appeal fee under Rule 103(1) (a) EPC was maintained.

VI. The appellant's Main Request is constituted by the following application documents:

- Description, pages 1 to 28, filed with letter of 5 May 2021;
- Claims 1 to 13 titled "AMENDED MAIN REQUEST", filed with letter of 5 May 2021;
- Drawings, Sheets 1/11 to 11/11 as published.

VII. Claim 1 of the Main Request is worded as follows:

Apparatus for controlling and monitoring the storage and dispensing of beverage products; the apparatus comprising:

a plurality of metering dispensers (10, 11, 16, 18) including a draught beverage dispenser in a sales location from which one or more authorized users can dispense beverage products to customers;

1st instance a plurality of locking means (15) for preventing dispensing of a beverage product, each said locking means (15) being operatively linked to a different one of said metering dispensers (10, 11, 16, 18);

a plurality of user identifying devices (12) for identifying authorized users; and

a processor (13) for receiving and processing data from the said user identifying devices (12) and metering

dispensers (10, 11, 16, 18), recording the dispensing of beverage products from the metering dispensers (10, 11, 16, 18) by authorized users and calculating the total value of each transaction made by each user; characterised in the apparatus further comprising: a plurality of product registration devices for registering the presence of beverage products in one or more secure storage rooms (17), each product registration device being associated with one beverage product or a linked group of beverage products, wherein the product registration devices comprise a tray upon which the beverage product or linked group of beverage products is located, the tray having an associated weighing device which registers the weight of the beverage product or linked group of products and detects removal of the beverage product or group of products from the tray and transmits to the processor information enabling the processor to determine the quantity and type of beverage products removed from the tray;

2nd instance one or more locking means (15) for controlling access to the one or more secure storage rooms (17), each 2nd instance locking means being associated with one storage room; wherein each user identifying device (12) being operatively linked to a different one of said 1st instance and 2nd instance locking means (15) so that an authorized user can unlock the said 1st instance locking means and thereby dispense a beverage product from an operatively linked metering dispenser or, by unlocking a 2nd instance locking means, can enter one of the one or more secure storage rooms (17); and wherein the processor (13) further receives and processes data from the said product registration devices, and records the placing of beverage products in the one or more storage rooms (17), the removal of

beverage products from the one or more secure storage rooms (17) and removals of stock from the secure storage room can be correlated with the addition of beverage products to one or more of the metering dispensers by the processor.

VIII. The wording of the claims of the Auxiliary Requests is not relevant for the decision.

Reasons for the Decision

1. The appeal is admissible.
2. The claimed invention
 - 2.1 The invention relates to an apparatus for controlling and monitoring the storage and dispensing of beverage products, e.g. in a bar or a restaurant.

The apparatus comprises a plurality of metering dispensers which can be, for example, fixed volume spirits dispensers (e.g. for whiskey, cognac, etc.), draught beverage dispensers (e.g. for beer, soft drinks, etc.) or cabinets for bottled beverages (temperature-controlled or ambient). Each metering dispenser is controlled by a locking device (1st instance), which prevents dispensing of the beverage product. Each locking device is operatively linked with a user identifying device for identifying authorised users. When a user is identified as authorised, the locking device "unlocks" the corresponding metering dispenser and allows dispensing of the beverage product.

A processor collects and processes data from the user identifying devices and the metering dispensers,

records the dispensing of beverage by authorised users, and calculates the total value of each transaction made by each user.

Such an apparatus is acknowledged as being known in the art (see also D1 by the same applicant, cited on page 2, line 6 of the published application).

- 2.2 The claimed apparatus further comprises one or more secure storage rooms in which a plurality of product registration devices are installed. Each product registration device is associated with one beverage or a group of similar beverage products and comprises a mechanism which registers the weight of the beverage product(s) in/on the device, detects their removal and transmits information to the processor enabling it to determine the quantity and the type of beverage product(s) removed from the device. Access to each storage room is controlled by corresponding locking means (2nd instance), each associated with a user identification device.
- 2.3 The concept behind the invention is a better control/monitoring of the stock (inventory) of the beverage products. Access to the storage room(s) is only allowed to authorised users, as is the dispensing of beverage products by the metering dispensers. The processor collects information from the metering dispensers, the user identification devices, and the product registration devices in the secure storage room(s). The processor can thus monitor who enters the secure storage room(s), who dispenses which beverage product, as well as the beverage products added into the storage room(s) and the beverage products removed from the storage room(s). It can also correlate the removal of beverage products from the storage room(s) with the

addition of beverage products to the metering dispensers.

In this way the apparatus "knows" at any time the quantity of the available beverage products, which user added or removed which products from the storage room(s), and the quantity of dispensed products per authorised user. By correlating the removals from the storage room(s) to the additions to the metering dispensers it can also recognise when beverage products "disappear" between the storage room(s) and the metering dispenser(s).

3. Main Request

3.1 Amendments

The amendments carried out in the set of claims filed with the letter of 5 May 2021 consist of a sole linguistic change: "store room(s)" has been changed into "storage room(s)". As the appellant explains, the term "store room" does not appear in the application as originally filed. The application discloses instead a "storage location" which "is typically a room" (see page 10, lines 9 and 10 of the published application).

The amendments in the description adapt it to the claims of the amended Main Request.

The board is satisfied that subject-matter going beyond the content of the application as filed has not been added and the application complies with Article 123(2) EPC. Moreover, the objections raised by the board in its communication (see point 2) have been overcome.

3.2 Inventive Step (Article 56 EPC)

3.2.1 It is common ground that D1 represents the closest prior art and that it discloses the preamble of claim 1 (see page 6, line 20 to page 8, line 20 and claim 1 of D1).

3.2.2 The apparatus of claim 1 differs from the one in D1 in that it comprises:

- a plurality of product registration devices for registering the presence of beverage products in one or more secure storage rooms (17), each product registration device being associated with one beverage product or a linked group of beverage products;
- wherein the product registration devices comprise means...[to register the weight of the product(s)], [which] detects removal of products and transmits information to the processor information enabling the processor to determine the quantity and type of beverage products removed from the tray;
- 2nd instance one or more locking means (15) for controlling access to the one or more secure storage rooms (17), each 2nd instance locking means being associated with one store room;
- wherein each user identifying device (12) being operatively linked to a different one of said 1st instance and 2nd instance locking means (15) so that an authorized user can unlock the said 1st instance locking means and thereby dispense a beverage product from an operatively linked metering dispenser or, by unlocking a 2nd instance locking means, can enter one of the one or more secure storage rooms (17); and

- wherein the processor (13) further receives and processes data from said product registration devices, and records the placing of beverage products in the one or more store rooms (17), the removal of beverage products from the one or more secure store rooms (17) and removals of stock from the secure store room can be correlated with the addition of beverage products to one or more of the metering dispensers by the processor.

3.2.3 The examining division considered a cabinet of a dispenser in D1 to correspond to a secure storage room in the sense of claim 1 (see in the middle of page 4 and point 16 of the decision under appeal). The board, however, does not agree with this interpretation. In the board's view, it is clear from claim 1 of the Main Request, as well as from the application as a whole, that the secure storage room (17) is not part of the metering dispensers. For example, there is a clear distinction between the locking means for the metering dispensers (1st instance) and the locking means for the storage room(s) (2nd instance). Moreover, the defined correlation between the removals of beverages from the storage room and the addition of beverage products to the metering dispensers (see last lines of claim 1) would not make any sense if the storage room were part of the metering dispensers. Hence, the board considers that the features distinguishing claim 1 of the Main Request from D1 are the ones listed above and not those identified by the examining division.

3.2.4 The board regards therefore as the technical problem solved by these distinguishing features to be "how to improve the control and monitoring of the stock (inventory) of the beverage products" of the apparatus

of D1.

The board finds the examining division's definition of the problem to be solved (*"how to enhance the functionality of the apparatus of D1"*; see in the middle of page 8 of the impugned decision) to be vague as it does not reflect the technical effect(s) achieved by the features distinguishing claim 1 from D1.

Furthermore, that definition of the technical problem was based on a different interpretation of D1 by the examining division which led to the identification of different distinguishing technical features.

3.2.5 The skilled person starting from D1 would not find any indication in the state of the art as to how to proceed and arrive at the apparatus of claim 1 without exercising inventive skills.

3.2.6 Neither D1 nor any other of the prior art documents available discloses or suggests an apparatus with such a two level control and monitoring of the stock of beverage products.

Both D4 and D5, which were cited in the impugned decision (see page 8, last paragraph), describe dispensing cabinets that open after an authorised user is authenticated (see respective abstracts). The same applies for documents D2 and D3 (see respective abstracts), which were also referred to by the examining division (see first lines on page 9 of the impugned decision).

As previously explained (see point 3.2.3 above), the board considers such cabinets to correspond to the metering dispensers of the claimed apparatus which cannot be regarded as secure storage rooms in the sense

of the present application. This interpretation is also corroborated by the fact that cabinets like the ones in the prior art are explicitly defined as metering dispensers in claim 4 of the Main Request (see also page 16, line 25 to page 17, line 20 of the application as published).

3.2.7 The board concludes, therefore, that the subject-matter of claim 1 of the Main Request involves an inventive step within the meaning of Article 56 EPC. Claims 2 to 13 depend directly or indirectly on claim 1 and are also inventive.

3.3 The board is thus persuaded that the application according to the Main Request and the invention to which it relates meet the requirements of the EPC and a European patent is to be granted (Article 97(1) EPC).

4. Reimbursement of the appeal fee

4.1 The appellant requested reimbursement of appeal fee on the ground that the examining division had committed a series of substantial procedural violations. The appellant argued that the examining division, among others, *had made up its mind to refuse the application before (or without) giving due consideration to the technical features of the claims* (see points [76] to [108] of the statement of the grounds of the appeal).

More specifically, the appellant argued that the examining division had not taken into account his arguments explaining the technical features of the claims, in particular the distinction between sensors and switches, and the definition of the technical problem to be solved.

4.2 The procedure in the first instance can be summarised as follows:

- The application was filed as international application with the EPO. In the IPER an objection for lack of inventive step of claim 1 with respect to D1 was raised. The technical problem to be solved was formulated as "how to improve the supervision of the system of D1".
- The applicant filed new claims with the entry into the European regional phase (10 August 2015). At this stage the applicant argued against the definition of the objective technical problem and the objections raised in the international phase.
- In its first communication of 12 October 2015 the examining division maintained the objections raised in the international preliminary examination report (see point 4), including the definition of the technical problem to be solved. Additional comments were made regarding the feature "secure storage locations" but the applicant's objections to the definition of technical problem were not noted.
- With his letter of 11 February 2016, the applicant filed new claims. He analysed the disclosure of D1 and commented on the objections of the examining division, among others on the interpretation of the feature of "secure storage locations".
- On 10 March 2016 the examining division issued summons to oral proceedings. In the annexed communication, objections for lack of inventive step of claim 1 with respect to D1 were raised. Four features distinguishing claim 1 from D1 were

identified. The objective technical problem was formulated as "how to enhance the functionality of the apparatus of D1". The examining division commented on (some of) the arguments of the applicant, but repeated its interpretation of the "secure storage room" without mentioning the applicant's corresponding arguments.

- The applicant replied to the summons to oral proceedings with a letter dated 25 November 2016. He filed a new Main Request as well First and Second Auxiliary requests. The applicant disagreed with the objective technical problem formulated by the examining division and formulated a different technical problem for every request. He commented in detail on D4, D5, the weighing devices of D4 and D5, differences from D1, etc. He also provided particular details on the switches (in relation to the First and Second Auxiliary requests) and how they differed from the sensor of D1, which problem they solved, etc.

- A second preliminary opinion was issued by the examining division on 23 December 2016 after a telephone call with the applicant. It contained an analysis only of claim 1 of Second Auxiliary request, stating that it contained all features of claim 1 of the Main Request and the First Auxiliary Request. The examining division identified six distinguishing features over D1 (the first four were the same as in the communication annexed to the summons). The examining division repeated its definition of the objective technical problem to be solved (now for claim 1 of the Second Auxiliary Request) without commenting on the applicant's objections or the technical problems he had

formulated. The examining division repeated its arguments from the annex to the summons regarding the obviousness of the first four distinguishing features. The fifth feature (v) was also considered obvious. The sixth feature (vi), which related to the switches, solved a separate technical problem. D1 disclosed an apparatus with one sensor and it would have been obvious to add more sensors. As a reply to the arguments of the applicant regarding the differences between switches and sensors, the examining division cited a passage of D1 (without any further comments) and referred generally to D8, *which disclose[d] several sensors.*

- In a letter of 20 January 2017, the applicant reiterated his objections to the formulation of the objective technical problem by the examining division. He also objected to the treatment of all requests together under the Second Auxiliary request because each request addressed a different technical problem. The applicant further objected to the interpretation by the examining division that each shelf of the dispensing cabinet in D1 contained only one beverage product. Regarding the First and Second Auxiliary requests, the applicant pointed out that the switches in the claims were not the same as the sensors in D1 or D8. He repeated his analysis of D1 and the advantages of the claimed apparatus with a plurality of switches.
- In the decision under appeal, the examining division assessed only claim 1 of Second Auxiliary request as it had done in its second preliminary opinion. The division repeated its arguments from the preliminary opinion, based on the same definition of the technical problem without

commenting on the applicant's arguments regarding different technical problem(s) or why the requests should not be treated together. The division did not comment at all on the applicant's arguments regarding the differences between sensors and switches or his objections regarding the division's interpretation of D1 that each self in the dispensing cabinet contained only one beverage product. In essence, the division repeated its preliminary opinion in the reasons of the decision.

- 4.3 Summarising, the examining division never commented on the applicant's arguments regarding the definition of the technical problem to be solved but kept repeating its own formulation of the technical problem. The examining division was of course not obliged to accept the applicant's definition of the technical problem, but it should have at least explained why it regarded its own definition more appropriate.

In addition, the examining division never discussed the issue of switches and sensors despite the applicant's repeated arguments on the differences between them. The examining division never explained why it considered that the sensor in D1 was the same as the switch of the claim and why, on the basis of D1, it would be obvious to add more sensors. It simply repeatedly cited a passage of D1 and made reference to the abstracts of D4 and D5 without any further comments or reasoning.

- 4.4 According to Article 113(1) EPC, the decisions of the EPO may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments. It is also established that the right to be heard also requires that the comments presented are considered, that is, *reviewed with*

respect to their relevance for the decision on the matter (see e.g. T 0763/04, point 4 of the reasons, and in general, Case Law of the Boards of Appeal of the EPO, 9th Edition, July 2019, III.B.2.4.1 and 2.4.2).

- 4.5 In the present case, the examining division did not address the applicant's comments but kept repeating its own reasoning without taking into account the applicant's objections to it. Moreover, the applicant's comments, which related to the interpretation of technical features in the claims and the closest prior art, as well as to the formulation of the objective technical problem (a fundamental step in the assessment of inventive step according to the problem-solution approach) were touching upon crucial points of the inventive step assessment and were thus relevant for the decision to refuse the application.

By ignoring these comments which could have had an influence on the final decision, the examining division did not respect the applicant's right to be heard according to Article 113(1) EPC and committed a substantial procedural violation.

- 4.6 According to Rule 103(1)(a) EPC, the appeal fee is to be reimbursed where the Board of Appeal deems an appeal to be allowable, if such a reimbursement is equitable by reason of a substantial procedural violation.

In view of the circumstances described above, the board considers that the substantive procedural violation committed by the examining division had a causal link with the impugned decision. In other words, had the examining division taken the applicant's comments into consideration, its final decision may have been different.

Since the appeal is deemed allowable, the board, in view of the above considerations, regards a reimbursement of the appeal to be equitable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a patent in the following version:
 - Description, pages 1 to 28, filed with letter of 5 May 2021;
 - Claims 1 to 13 titled "AMENDED MAIN REQUEST", filed with letter of 5 May 2021;
 - Drawings, Sheets 1/11 to 11/11 as published.
3. The appeal fee is to be reimbursed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated