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Datasheet for the decision of 13 May 2020

Case Number: T 0635/18 - 3.5.05

Application Number: 10012933.7

Publication Number: 2290571

IPC: G06F19/00

Language of the proceedings: EN

Title of invention:
Method for ensuring the viability of blood to be transfused

Applicant:
Haemonetics Corporation

Headword:
Viable blood/HAEMONETICS

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Amendments - added subject-matter (yes)

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Case Number: T 0635/18 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 13 May 2020

Appellant: (Applicant)	Haemonetics Corporation 400 Wood Road Braintree MA 02184-9114 (US)
Representative:	Grünecker Patent- und Rechtsanwälte PartG mbB Leopoldstraße 4 80802 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 12 October 2017 refusing European patent application No. 10012933.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. The appeal is against the examining division's decision to refuse the application on the grounds that the main request did not meet the requirements of Article 123(2) EPC and that the main request and auxiliary requests 1 and 2 lacked inventive step (Article 56 EPC). The application was filed as a divisional application.

II. With its statement setting out the grounds of appeal, the appellant re-filed the main request and auxiliary requests 1 and 2 on which the contested decision was based. The appellant requested that the decision be set aside and a patent be granted on the basis of one of these requests. It requested oral proceedings as an auxiliary measure.

III. The board summoned the appellant to oral proceedings. In its preliminary opinion issued in preparation for the oral proceedings, the board raised objections against all requests on file under *inter alia* Article 123(2) EPC.

IV. The appellant did not make any submissions in reply to the summons to oral proceedings. It merely withdrew its request for oral proceedings. The scheduled oral proceedings were thus cancelled.

V. Claim 1 of the main request reads as follows:

"A method for ensuring the viability of blood to be transfused, the method comprising the steps of:
(a) providing a blood unit identifying bar code for a blood unit;

(b) providing a caregiver removing blood from a refrigerated storage compartment with a caregiver bar code;
(c) scanning the caregiver bar code when the blood unit is to be removed from the refrigerated storage compartment;
(d) recording the blood unit identifying bar code when the blood unit is removed from the refrigerated storage compartment;
(e) recording the time at which the blood unit is removed from the refrigerated storage compartment;
(f) scanning the caregiver bar code when the blood unit is to be returned to a refrigerated storage compartment;
(g) reading the blood unit identifying bar code when the blood unit is returned to a refrigerated storage compartment;
(h) recording the time at which the blood unit is returned to a refrigerated storage compartment;
(i) comparing the time the blood unit was first removed from a refrigerated storage compartment to the time the blood unit was returned to a refrigerated storage compartment and calculating the time that the blood unit was outside of a refrigerated storage compartment;
(j) unlocking the refrigerated storage compartment when the blood unit identifying bar code is read;
and
(k) providing a warning if the blood unit was outside of a refrigerator for more than a pre-set time limit."

VI. Claim 1 of auxiliary request 1 reads as follows:

"A method for ensuring the viability of blood to be transfused, the method comprising the following steps that are subsequently performed in the given order:

(a) providing a blood unit identifying code for a blood unit;
(b) providing a caregiver removing the blood from a refrigerated storage compartment with a caregiver bar code;
(c) scanning the caregiver bar code by means of a bar code reader;
(d) determining by software located on a computer if the caregiver identified by the caregiver code is authorized to collect blood units, and if so displaying two buttons on a touch screen;
(e) touching, by the caregiver, an appropriate one of the two buttons to indicate that the caregiver intends to remove blood from a refrigerated compartment;
(f) unlocking a lock of the refrigerated storage compartment by the computer;
(g) selecting, by the caregiver, a blood unit labeled with a compatibility label matching a patient for whom the caregiver is collecting the blood;
(h) reading by means of the bar code reader a barcode on the blood unit that uniquely identifies the blood unit or the compatibility label;
(i) reading by means of the bar code reader a request slip printed when blood was requested for the patient;
(j) retrieving by the software records from a transfusion database to determine if the blood is still useable and, if so, retrieving by the software records from the transfusion database to determine which patient the blood unit was assigned to and comparing this information to that encode on the request slip and, if the information matches and the blood unit is still useable, providing, by the computer, confirmation, using a speaker and a touchscreen connected to the computer, that the correct blood unit has been selected and, if the information does not match or the blood unit is not still useable, warning,

by the computer and using the speaker and the touchscreen, the caregiver that the wrong blood was selected;
(k) recording the time at which the blood unit is removed from a refrigerated storage compartment; and
(l) returning the blood unit to the same or another refrigerated storage compartment by the caregiver including
(1) scanning the caregiver bar code by means of a bar code reader;
(2) determining by software located on a computer if the caregiver identified by the caregiver code is authorized to return blood units, and if so displaying two buttons on a touch screen;
(3) touching, by the caregiver, an appropriate one of the two buttons to indicate that the caregiver intends to return blood to the same or another refrigerated storage compartment;
(4) reading by means of the bar code reader the barcode on the blood unit that uniquely identifies the blood unit or the compatibility label;
(5) unlocking a lock of the refrigerated storage compartment by the computer;
(6) retrieving by the software records from a transfusion database to determine when the blood unit was removed from refrigeration; and
(7) calculating the time the blood has been outside of refrigeration and comparing the calculated time with a pre-set allowable limit and, if the blood unit has not been outside of refrigeration for more than the pre-set allowable limit, providing, by the computer, confirmation, using a speaker and a touchscreen connected to the computer, and if the blood unit has been outside of refrigeration for more than the pre-set

allowable limit, giving a warning, by the computer and using the speaker and the touchscreen."

VII. Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that the wording of steps (g) and (h) was replaced with the following text:

"(g) selecting, by the caregiver, a blood unit labeled with a compatibility label matching a patient for whom the caregiver is collecting the blood, wherein patient identification information and blood unit identification information are encoded in an electronically readable compatibility code included in the compatibility label;
(h) reading by means of the bar code reader the compatibility label;"

Reasons for the Decision

1. Main request

1.1 The condition "when the blood unit identifying bar code is read" in step (j) of the method of claim 1 of the main request contains subject-matter which extends beyond the content of the application as originally filed (Article 123(2) EPC).

1.2 In the statement setting out the grounds of appeal, the appellant stated that claim 68 of the parent application and embodiment 1 in the description, which refers to Figure 7A, were the basis for this claim (see the statement setting out the grounds of appeal, page 3, first full paragraph). However, the parent application is not relevant for assessing whether the application in this case complies with the provisions

of Article 123(2) EPC. Figure 7A and the pertinent passage of the description on page 12, line 33 to page 14, line 8 of the present application deal exclusively with the collection of a blood unit from a refrigerator, whereas step (j) in claim 1 is related to the return of the blood unit to the refrigerator. Therefore, they cannot provide the basis for the amendment in question either.

1.3 The only passage in the application as originally filed that is related to "unlocking the refrigerated storage compartment" mentioned in step (j) is on page 14. The passage describes the return of a blood unit to the refrigerator with reference to Figure 7B, but Figure 7B does not mention any unlocking of the refrigerator. Page 14, lines 20 to 21 discloses merely that "computer 66 unlocks lock 68 so that the caregiver can place the blood unit into refrigerator 70" without specifying when. Although this sentence is located between two sentences describing steps 154 and 156, its mere location would not be sufficient to satisfy the criterion that the amendment "when the blood unit identifying bar code is read" should be directly and unambiguously derivable from the application as originally filed.

1.4 Therefore, claim 1 of the main request does not meet the requirements of Article 123(2) EPC.

2. Auxiliary requests 1 and 2

2.1 An analogous added-matter objection applies to claim 1 of auxiliary requests 1 and 2, the preambles of which both contain the condition that "the method comprising the following steps [...] are subsequently performed in the given order" and then require step (l)(5), where

the refrigerated storage compartment is unlocked (see step (j) in the main request), to be performed between step (l)(4) of reading the barcode on the blood unit and step (l)(6) of retrieving records from the transfusion database. The application as originally filed does not provide any basis for this order.

2.2 Therefore, claim 1 of neither auxiliary request meets the requirements of Article 123(2) EPC.

3. The board raised the above objections in its preliminary opinion issued in preparation for the oral proceedings. Since the appellant did not respond to these objections, the board sees no reason to change its preliminary opinion.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

A. Chavinier-Tomsic A. Ritzka

Decision electronically authenticated