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**Datasheet for the decision
of 31 January 2023**

Case Number: T 2630/18 - 3.5.01

Application Number: 08782226.8

Publication Number: 2186045

IPC: G06Q10/00

Language of the proceedings: EN

Title of invention:

TRACKING COMPLIANCE OF PERSONAL PROTECTION ARTICLES

Applicant:

3M Innovative Properties Company

Headword:

Compliance of PPE articles/3M INNOVATIVE PROPERTIES

Relevant legal provisions:

EPC Art. 56, 84, 123(2)

RPBA 2020 Art. 13(2)

Keyword:

Inventive step - evaluating a criterion concerning a personal protection article based on data sensed in the working environment (no - not technical at the claimed level of generality)

Decisions cited:

T 0641/00



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Case Number: T 2630/18 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 31 January 2023

Appellant: 3M Innovative Properties Company
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 29 May 2018
refusing European patent application No.
08782226.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: W. Zubrzycki
C. Schmidt

Summary of Facts and Submissions

- I. This is an appeal against the decision of the examining division to refuse European patent application No. 08782226.8.
- II. The invention concerns a system for determining whether a personal protection article, such as a respirator or a hard hat, complies with occupational and safety regulations (published international application, page 3, second paragraph).
- III. Claim 1 of the refused request, filed 10 April 2018, reads:

" A computer based tracking system for determining if an article of personal protection satisfies at least one predetermined criterion based at least in part on smart tag data and one or more variables related to usage of the personal protection article, the system comprising:

at least one personal protection article configured with a smart tag and at least one sensor;

a data processing system including at least one predetermined criterion that governs use of the at least one personal protection article;

an information retrieval system coupled to the data processing system, the information retrieval system comprising at least one data acquiring device configured to acquire smart tag data from the smart tag and the at least one sensor configured to sense the one or more variables related to usage of the personal protection article being tracked;

the information retrieval system is configured to retrieve, using wireless communication, the smart tag

data from the at least one smart tag in the working environment by means of the at least one data acquiring device and to retrieve the variables sensed by the at least one sensor, wherein a type of the at least one personal protection articles determines the variables;

the data processing system including a determining mechanism for receiving the smart tag data from the information retrieval system and processing the retrieved smart tag data and the sensed variables for determining whether the smart tag data satisfies the at least one predetermined criterion, based at least in part on the data of the smart tag and the one or more variables; and,

the data processing system including storage for storing data relating to results of the determination."

- IV. The examining division stated at point 1.2 of the decision that this claim differed from D7 (US 2005/0114154 A1) in that:
- a) The information retrieval system and data processing system are separate.
 - b) The smart tag data and the sensed variables, which depend on the type of personal protection article, are processed to determine whether the smart tag data satisfies at least one predetermined criterion.

They held that these features were obvious.

- V. In the statement setting out the grounds of appeal, the appellant requested that the decision be set aside and a patent be granted on the basis of the refused request.

- VI. In the communication accompanying the summons to oral proceedings, the Board agreed with the examining division's novelty assessment, stating:

"4.1 ... D7 relates to a system for monitoring personnel wearing protective garments while working in hazardous conditions (see paragraph [1]). Looking at Figures 3 and 4, the system of D7 comprises smart tags 14 attached to the protective garments 12 and containing their identifying information 20 ([26]). The system also comprises biosensors 52 monitoring temperature and presence of hazardous materials ([46] and [52]). The smart tags and biosensors transmit information to a computer system 40 ([51], last sentence) which, based on this information, determines that an individual should put on additional garments, such as a gas mask ([52]).

The appellant argued that the biosensors in D7 sensed 'a change in the environment' and did not correspond to the sensor in claim 1 sensing variables 'related to the usage of the personal protection article' (grounds of appeal, page 4, second paragraph). However, the Board agrees with point 1.7 of the appealed decision that the presence of hazardous materials is related to the usage of personal protection articles; they are used exactly for the purpose of minimising the wearer's exposure to such hazardous materials."

VII. Concerning the obviousness of the distinguishing features, the Board agreed with the examining division's conclusions arguing as follows:

"4.3 The examining division considered that distinguishing feature A was an obvious implementation alternative (decision, point 1.3). The appellant did not take issue with that. Neither does the Board.

...

4.5 *The Board agrees with the division's conclusion that feature B relates to an administrative non-technical task. ... In fact, the general wording 'determining whether the smart tag data satisfies the at least one predetermined criterion' is not limited to any specific criterion or data. As a result, feature B also covers evaluations manifestly lacking technical character, such as determining whether a protection article was insured or authorised for use under certain environmental conditions.*

...

Applying the COMVIK approach, a feature can only support the presence of inventive step to the extent that it contributes to technical character of the invention (decision T 641/00, headnote I). It follows that distinguishing feature B, covering clearly non-technical evaluations, cannot support the presence of inventive step (see G1/19, point 84 of the reasons).

4.6 *The appellant argued that feature B solved the objective technical problem of increasing the accuracy of determining whether an article of personal protection satisfied at least one predefined criterion (grounds of appeal, paragraph bridging pages 3 and 4; page 6, second paragraph).*

4.7 *However, feature B gives no solution to this problem. Furthermore, the problem would be technical only if the evaluated condition had a technical character which, as set out above, is not the case.*

4.8 *The appellant argued further that checking whether a protection article satisfied a criterion based on an environmental rule, a health rule or a safety rule was*

a technical task (grounds of appeal, page 4, third paragraph). ...

However, as set out above, the disclosed examples and embodiments cannot support the presence of inventive step of claim 1 as it is not limited to them. ...

4.9 The appellant argued further that D7 did not provide any hints to the claimed solution which was therefore not obvious (grounds of appeal, page 4; page 6, last paragraph).

However, since under the COMVIK principle, non-technical feature B cannot support the presence of inventive step, the question of its obviousness is moot."

VIII. With a letter dated 30 December 2022, the appellant filed an auxiliary request and provided arguments in favour of its admissibility and inventive step. This letter did not discuss the refused request.

IX. Claim 1 of the auxiliary request qualified most of the features of claim 1 of the main request.

In particular, the second feature:

"the sensor being configured to provide data regarding one or more of concentration levels, types of contaminants, presence or absence of contaminants, insufficient or no current to run a circuit of the PPE article, inadequate pressure for a self-contained breathing apparatus (SCBA), insufficient or no battery power, breakthrough of a chemical through a filter, or inoperable safety mechanisms",

and the third feature:

"wherein the criterion [governing the use of the personal protection article] is related to PPE usage, location, cleaning, maintaining, decontamination or disposal and includes government or industry regulations provided for use of filters in PPE or to regulations for filtering facepieces to be used with particular contaminant and/or for certain exposure times based on contaminant levels or rules and regulations requiring hard hats, safety glasses and safety footwear meeting certain certification standards".

- X. The oral proceedings per videoconference took place on 31 January 2023. During the oral proceedings, the admissibility of the auxiliary request was discussed.

The appellant's final requests were that the decision be set aside and a patent be granted on the basis of the refused main request, or the auxiliary request, filed with the letter dated 30 December 2022.

Reasons for the Decision

1. The invention
- 1.1 Looking at Figure 1, the system of the invention comprises the protective article PPE 120 having an attached smart tag 130 (page 7, lines 8 to 10) and sensors 145 which monitor conditions relevant to the tag's use (page 11, lines 6 to 14).

The smart tags and the sensors are read by the acquiring devices 140 ("information retrieval system")

in the claim), see page 9, line 27 to page 10, line 4.

- 1.2 Looking at Figure 2, the acquired data is transmitted to a central computer 150 ("data processing system"), see page 17, lines 17 to 18. This system determines whether the smart tag data satisfies at least one predetermined criterion based on the smart tag data and the sensed conditions, see page 18, lines 4 to 8.
- 1.3 Although the application discloses example embodiments in which specific data and criteria are used, the claim leaves open the type of personal protection article involved, what data the smart tag contains, what conditions the sensors monitor and what sort of criterion is evaluated.

2. Main request, Article 56 EPC

In the annex to the summons, the Board essentially maintained the examining division's objection against inventive step (see points VI and VII, above). The appellant did not provide any further arguments. Therefore, the Board judges that the main request lacks an inventive step for the reasons given in the annex.

3. Auxiliary request

- 3.1 The Board does not admit the auxiliary request, filed after the notification of the summons to oral proceedings, into the proceedings under Article 13(2) RPBA 2020.
- 3.2 The appellant argued that this request complied with the requirements of Article 13(2) RPBA 2020 because it overcame the objection regarding administrative and non-technical features (see letter of 30 December 2022,

page 12).

However, since the objection under Article 56 EPC, which this request attempts to address, was raised in the contested decision, the request could have been filed in the first instance proceedings, or with the statement setting out the grounds of appeal at the latest. In consequence, there are no exceptional circumstances in the sense of Article 13(2) RPBA 2020 which justify admitting the request.

3.3 Moreover, although the appellant argued that the request was in condition for grant, the Board judges that, contrary to the requirements of Article 13(1) RPBA 2020, it *prima facie* raises new clarity issues and contains added subject-matter (Articles 84 and 123(2) EPC).

3.3.1 Firstly, it is not clear in claim 1 how the claimed system determines that hard hats and safety glasses meet certification standards (claim 1, third feature, last alternative) based on data describing concentration levels and types of contaminants (second feature, first two alternatives).

The Board is not convinced by the appellant's argument that the claim was clear because the skilled person would have recognised that the data on contaminants was not to be used to evaluate hard hats-related criteria. What counts with respect to clarity is that the claim covers this evaluation.

3.3.2 Secondly, the Board has doubts that the evaluation at issue is directly and unambiguously derivable from the application which does not disclose any embodiment in

which contaminant-related data is used to evaluate a criterion relating to a hard hat (Article 123(2) EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated