

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 23 October 2019**

Case Number: T 2910/18 - 3.5.02

Application Number: 06709000.1

Publication Number: 1861839

IPC: G08B21/18, G05B23/02, H04L12/28

Language of the proceedings: EN

Title of invention:

Accessory controlling and tracking the operation of household appliances and entertainment equipment

Patent Proprietor:

Innohome Oy

Opponent:

Safera OY

Relevant legal provisions:

RPBA Art. 13(1)
EPC Art. 123(2)

Keyword:

Late-filed main request - procedural economy
Amendments - auxiliary request - allowable (no)



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2910/18 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 23 October 2019

Appellant: Innohome Oy
(Patent Proprietor) Itsehallintokuja 6
02600 Espoo (FI)

Representative: Boco IP Oy Ab
Itämerenkatu 5
00180 Helsinki (FI)

Respondent: Safera OY
(Opponent) Tekniikantie 4B
02150 Espoo (FI)

Representative: Papula Oy
P.O. Box 981
00101 Helsinki (FI)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 24 October 2018
revoking European patent No. 1861839 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman R. Lord
Members: H. Bronold
J. Hoppe

Summary of Facts and Submissions

- I. The appeal of the patent proprietor lies from the decision of the opposition division revoking European patent No. 1 861 839.

The opposition division concluded that the main request and the auxiliary request pending before it contravened Article 123(2) EPC because features a) and b) in the independent claims of these requests were formulated in an "and"-combination although according to the original disclosure said features were alternatives as shown by the linking word "or".

- II. In a communication under Article 15(1) RPBA the board informed the parties that it tended to agree with the respondent that both the main request and the auxiliary request as decided upon by the opposition division and at that time still on file contravened Article 123(2) EPC.

- III. With letter dated 26 July 2019 the appellant filed a new main request that still comprised the amendment which the opposition division had already found to contravene Article 123(2) EPC.

- IV. Oral proceedings before the board took place on 23 October 2019.

- V. The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained in amended form based on the claims of the main request filed with letter dated 26 July 2019, or as an auxiliary measure, based on the claims of the auxiliary request, filed on 7 August 2018.

VI. The respondent (opponent) requested that the appeal be dismissed.

VII. Independent claim 1 according to the main request reads as follows:

"A system suitable for controlling or tracking the operation of household appliances or computer or entertainment equipment (subsequently appliance), the system comprising an appliance-specific accessory (1), which is located in connection with an appliance either as a separate unit or as a portion of the controlled or monitored appliance and which is attachable to an operating energy and/or water supply (4, 11) of the appliance, and wherein the accessory includes:

- connections (3, 9) for sensors monitoring either a user's presence or activity status or an operating environment or wired connections (7, 12) for signals tracking a flow rate of water or energy consumption, and
 - a processor or a control logic (15) for processing information received by way of said connections, and
 - control outputs for controlling (6, 13) the operation or operating energy or water of an appliance, or control signals for local (5) or remote (3) communication, the accessory is configured to monitor
- 1) the operating status of an appliance connected therewith on the basis of energy consumed thereby (measurement 7) or a water flow rate (measurement 12) or temperature, and
 - 2) the signal of an accessory linked functionally with the operating environment of the appliance, such as the signal of a leak (18), smoke (17), carbon monoxide, gas or temperature sensor (23) or other operating status related signal or a user's activity status or presence,

characterized in that the appliance-specific accessory (1) of the system is configured to

a) independently adapt itself to the signals of both the appliance connected therewith and other accessories or peripheral sensors of the operating environment, said signals including normal active cycles and consumption of energy or energy and water of the appliance and verification of active presence of a user by monitoring the use of the appliance, and on the basis of said adaptation said appliance-specific accessory is configured to perform a control of the appliance's operating status in such a way that it guides automatically the appliance's energy (4) or water (11) supply or activity (21, 22) to a predetermined operating status, and

b) identify signals or inter-signal relationships of the appliance connected therewith and accessories linked with its operating environment, such as peripheral sensors or similar other accessories (1), by tracking the conditions resulting from a normal or incorrect use or a malfunction of the appliance and, on the basis of such identification, control operation of the appliance and/or the peripherals or to communicates [sic] information about said conditions locally or by way of data transfer links from the operating facility to desired parties,

whereby the accessory (1) is adapted to prepare a user interface capable of self-control according to ambient conditions and the operating status of the appliance connected therewith." (Emphasis added by the board)

VIII. Independent claim 1 according to the auxiliary request comprises the highlighted portions of features a) and b) as set out above under VII. with respect to the main request in identical form. Features a) and b) are also combined with an "and".

IX. The appellant's arguments, as far as they are relevant for this decision, can be summarised as follows:

The main request filed on 26 July 2019 should be admitted because its subject-matter was prima facie new. The amendments to the main request addressed the misinterpretation of the subject-matter of claim 1 as presented in the obiter dictum of the contested decision by defining the subject-matter of claim 1 in a clearer manner.

Claim 1 according to the auxiliary request did not contravene Article 123(2) EPC. Features a) and b) in claim 1 were not alternatives but two aspects of the same process. There was original disclosure for this and-combination of features "a)" and "b)" of claim 1 in the originally filed disclosure on page 7, lines 10 to 16. In particular, the learning described in lines 10 to 12 of page 7 corresponded to the claimed feature "individually adapt". The tracking described in lines 12 and 13 of page 7 corresponded to the claimed feature "identify signals". Finally, the guiding of appliances described in lines 13 to 16 of page 7 corresponded to the claimed feature "on the basis of said adaptation ... perform control". Moreover, the claimed and-combination was also disclosed on page 4, lines 4 to 10 regarding the objective of the invention. Further, according to Webster's encyclopedic unabridged dictionary of the English language (1989) it followed that "or" was not to be understood as "exclusive or". Thus, the apparatus claimed needed to be suitable for both features a) and b).

X. The respondent's arguments, as far as they are relevant for this decision, can be summarised as follows:

The main request was filed late and contrary to procedural economy. The amendment "suitable for" had already been found to contravene Article 100 c) EPC by the opposition division in its communication dated 19 January 2018 accompanying summons to oral proceedings. Thus, the main request was prima facie not allowable. Therefore, it was not to be admitted into the proceedings.

The auxiliary request contravened Article 123(2) EPC. The combination of the claimed features a) and b) with an "and" was nowhere originally disclosed. The parts of the description cited by the appellant as basis for the amendment on the one hand disclosed more features than added to claim 1. On the other hand, it could not be identified, which features of the description on page 7, lines 10 to 16 corresponded to the claimed features a) and b).

Reasons for the Decision

1. Admissibility of the appeal

The appeal was filed in due time and form and sufficiently substantiated. Thus, the appeal is admissible.

2. Main request - Admissibility (Article 13(1) RPBA)

The main request is prima facie not allowable. This is a direct consequence of the fact that the auxiliary request contravenes Article 123(2) EPC as pointed out below under 3. because claimed features a) and b) are combined with each other in the same manner via an "and"-combination as in the auxiliary request. In addition, the board had already informed the parties about its preliminary opinion regarding this amendment.

In addition, the amendment "suitable for" in the main request had already been found to contravene Article 123(2) EPC by the opposition division in its communication dated 19 January 2018 under point 12.2.1.

Consequently, the main request prima facie contravenes Article 123(2) EPC.

Moreover, the appellant has explicitly declared that the amendments in the main request were not filed with the aim of overcoming the objections raised under Article 123(2) EPC.

Consequently, in view of procedural economy the board sees no reason why a request, that prima facie does not overcome the objections raised against the corresponding previous request and that is explicitly not intended to overcome these objections, but instead reintroduces objections that had been solved previously, should be admitted into the proceedings.

Therefore, the board decided to exercise its discretion under Article 13(1) RPBA not to admit the main request into the proceedings.

3. Auxiliary request - Amendments (Article 123(2) EPC)

The auxiliary request was filed on 7 August 2018. This request was found to contravene Article 123(2) EPC in the contested decision.

The board sees no reason to deviate from the opposition division's finding.

Independent claim 1 according to the auxiliary request comprises inter alia feature a) defining an adaptation of the accessory to signals and feature b) defining that the accessory is configured to identify signals or inter-signal relationships. Features a) and b) are claimed in an "and"-combination, i.e. a mandatory combination of features a) and b).

In the originally filed claim 1, features a) and b) were combined via an "or"-combination, thus defining them as alternatives. The corresponding amendment was referred to as "amendment 8" in the contested decision.

- 3.1 The appellant disputed that the original disclosure is limited to features a) and b) being alternatives, i.e. that "amendment 8" as discussed in the contested decision contravenes Article 123(2) EPC.

According to the appellant, there is original disclosure on page 7, lines 10 to 16, that features a) and b) are interrelated such that the adaptation of feature a) is needed for the identification of feature b) and vice versa.

- 3.2 The board does not agree with the appellant in this respect.

3.2.1 First of all, the parts of the application as originally filed on page 7, lines 10 to 16, cited by the appellant to support their argument, can not be read directly onto the wording of features a) and b) of claim 1. The cited passage on page 7 discloses "learning", "tracking" and "guiding". However, the allegedly corresponding features "a)" and "b)" according to claim 1 define "individually adapt", "identify signals" and "on the basis of said adaptation ... perform control". Thus, the wording of the features on page 7 of the description is clearly distinct from the wording of features "a)" and "b)" according to claim 1. Therefore, the board does not consider this passage to constitute a direct and unambiguous disclosure of claimed features "a)" and "b)" in an "and"-combination.

3.2.2 Secondly, the application as originally filed discloses that both features a) and b) are separate alternatives, because both contain a definition of how the desired control is carried out based solely on the feature-specific adaptation or identification, respectively.

As set put above under VIII., feature a) reads "...and on the basis of said adaptation ... perform a control of the appliance's operating status ...". Feature b) contains a similar formulation that "... on the basis of said identification, control operation of the appliance ..." (Emphasis added by the board).

Thus, a combination of features a) and b) is explicitly not disclosed or required for the desired control because according to feature a) the complete control is performed based on the adaptation carried out previously and according to feature b) the complete

control is performed based on the identification carried out previously. The formulation in originally filed claim 1 is further clear and consistent such that it leaves no room for speculation whether, although features a) and b) were clearly defined as alternatives, they still could be considered to be a mandatory combination.

- 3.2.3 Moreover, the passage cited on page 7 contains features beyond those identified by the appellant and which are not reflected in the wording of claim 1.

Further, the passages cited by the appellant from Webster's unabridged encyclopedic dictionary of the English language are not suitable to show that the linking term "or" is used to demonstrate that two things having a different meaning have to be present cumulatively as suggested by the wording of the amended claim 1.

Finally, the part of the application cited by the appellant on page 4, lines 4 to 10 regarding the objective of the invention, is not suitable to provide a basis for the amendment in claim 1 according to the auxiliary request either, because the two-fold control (i.e. the combination of features a) and b)) of an appliance as claimed in claim 1 is not mentioned there.

- 3.3 Therefore, the board has arrived at the conclusion that claim 1 extends beyond the content of the application as originally filed.

Consequently, the board agrees with the appealed decision and with the respondent that claim 1 according to the auxiliary request contravenes Article 123(2) EPC.

4. Conclusion

Since neither of the appellant's requests is allowable, the board accedes to the respondent's request to dismiss the appeal.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated