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**Datasheet for the decision
of 8 June 2020**

Case Number: T 1304/19 - 3.5.02

Application Number: 11782526.5

Publication Number: 2606479

IPC: G08B21/04

Language of the proceedings: EN

Title of invention:

The localization and activation of alarm of persons in danger

Applicant:

Kranz, Vladimir

Relevant legal provisions:

EPC Art. 108

EPC R. 99(2), 101(1)

Keyword:

Admissibility of appeal - appeal sufficiently substantiated
(no)



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Case Number: T 1304/19 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 8 June 2020

Appellant: Kranz, Vladimír
(Applicant) U Dubu 1291/5
14700 Praha 4 (CZ)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 29 November 2018 refusing European patent application No. 11782526.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Lord
Members: G. Flyng
R. Cramer

Summary of Facts and Submissions

- I. The applicant's appeal contests the examining division's decision to refuse the European patent application number 11 782 526.5, which was published under the PCT as WO 2012/022276 A2.
- II. In the contested decision, the examining division considered the applicant's requests for grant of a patent on the basis of a main request or alternatively one of the auxiliary requests 1 and 2, the claims of all of which were filed by telefax on 26 September 2018.

The examining division held in essence that:

- the independent claims 1 and 13 of the main request were not clear, contrary to Article 84 EPC (see Grounds for the Decision, section 3);
- the independent claims 1 and 13 of the main request lacked novelty in the sense of Article 54 EPC over the prior art document **D4 = WO 98/43537 A1** (see Grounds for the Decision, section 4);
- the independent claim 1 of the first auxiliary request constituted an intermediate generalisation which was not allowable under Article 123(2) EPC (see Grounds for the Decision, section 7);
- the independent claim 1 of the second auxiliary request was not clear, contrary to Article 84 EPC (see Grounds for the Decision, section 9.2); and
- the independent claim 1 of the second auxiliary request lacked an inventive step, Article 56 EPC, over document D4 in combination with document **D2 = US2003/176815 A1** (see Grounds for the Decision, sections 9.3 to 9.6).

III. In the Notice of Appeal the appellant (applicant) stated his request defining the subject of the appeal as follows:

Subjects of appeal:

- 1) Refusal of the application because it does not meet the requirements Articles 52(1) EPC regarding novelty.*
- 2) Declaration that requirements of Article 113(1) EPC concerning the right [sic] to be heard is met.*

IV. The appellant's statement setting out the grounds of appeal reads in its entirety as follows:

The appeal was applied for three reasons as follow:

- 1) When "Main set of claims" was discussed there were not allowed our further arguments for support of inventive step*
- 2) Incorrectly refused our argument concerning inventive step. We proposed removing of feature "ECG" from 1st claim. Then stayed "pulse curve with curves of regular pulse limits, arrhythmia values.....". This proposal was refused with reasoning, that document D4 contains that features, so inventive step need not to be assessed. We insist, that D4 does not contain the features in such complexity and there is no reason to expect that person skilled in the art could figure out it.*
- 3) When "1st Auxiliary set of Claims was not reasoned standpoint of Commission that technician could our solution figure out and out objection was not allowed. Refusal of the set was based on*

assertion, that there is not support for "contact both hands". We proposed change to "contact fingers of both hands". It was refused with reasoning that for this feature there is no support in the application, which is incorrect as there is clear support on figures and description too.

- V. In a communication pursuant to Rule 100(2) EPC dated 18 September 2019 the Board of Appeal informed the appellant that it seemed the appeal should be rejected as inadmissible in accordance with Rule 101(1) EPC.

The Board of Appeal set out that the statement of grounds of appeal did not fulfill the requirements of Article 108 EPC in conjunction with Rule 99(2) EPC on three counts:

- It failed to address the ground of lack of clarity for which the main request was refused (see paragraph 2.3 of the communication).
- It challenged the examining division's findings on novelty of the main request, but did not substantiate that challenge (see paragraph 2.4).
- It challenged the examining division's declaration that the requirements of Article 113(1) EPC concerning the right to be heard were met, but did not identify any ground for the decision on which the applicant was not given an opportunity to comment and so did not substantiate this challenge (see paragraph 2.5).

- VI. With a communication dated 21 February 2020 the appellant was notified of a loss of rights pursuant to Rule 112(1) EPC for failure to respond to the communication dated 18 September 2019. Attention was drawn to Rule 135 EPC (two-month period for requesting further processing).

- VII. With a notice from the European Patent Office dated 1 May 2020, concerning the disruptions due to the COVID-19 outbreak, periods expiring on or after 15 March 2020 were extended for all parties and their representatives to 2 June 2020. This provision applies to the two-month period for requesting further processing in response to the above communication.
- VIII. With a fax received on 2 June 2020 the appellant requested further processing, paid the appropriate fee and presented substantive arguments in relation to each of the three issues set out in the communication dated 18 September 2019 (i.e. clarity, novelty, right to be heard).
- IX. The appellant has not requested oral proceedings during the appeal proceedings.

Reasons for the Decision

1. According to Article 108 EPC, within four months of notification of the contested decision a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations. In this respect Rule 99, paragraph 2 EPC specifies that "In the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based". If the appeal does not comply with Article 108 or Rule 99, paragraph 2 EPC, the Board of Appeal shall reject it as inadmissible, see Rule 101, paragraph 1 EPC.

2. Whether a statement of grounds meets the requirements of Rule 99(2) EPC is decided upon on a case-by-case basis. It is, however, established case law that a statement of grounds fails to meet the minimum requirements if it deals with only one of several grounds for refusal (see Case Law of the Boards of Appeal, 9th edition, July 2019, V.A.2.6.3(c), second paragraph).

3. In the present case, the Board considers that the statement of grounds of appeal fails to meet the requirements of Rule 99(2) EPC on three counts.
 - 3.1 Firstly, the main request was refused by the examining division not only for lack of novelty, but also for lack of clarity, Article 84 EPC. The clarity objections set out in the contested decision had been raised by

the examining division in the annex to their communication dated 23 October 2018. The statement of grounds of appeal fails to address the ground of lack of clarity for which the main request was refused.

- 3.2 Secondly, although the appellant challenged the examining division's findings on novelty, which were made in respect of the main request, the statement of grounds of appeal does not address this issue. The first of the three arguments given in the grounds of appeal relates to inventive step, not novelty. The same is true for the second argument, which furthermore seems to concern an informal discussion regarding a proposed amendment which the applicant did not formally submit. The third argument appears to relate to an issue of Article 123(2) EPC in respect of the first auxiliary request. Thus the challenge to the examining division's findings on novelty was not substantiated in the statement of grounds of appeal.
- 3.3 Thirdly, the appellant challenged the examining division's declaration that the requirements of Article 113(1) EPC concerning the right to be heard were met, but the statement of grounds for appeal does not identify any ground for the decision on which the applicant was not given an opportunity to comment. Hence, also this challenge to the examining division's findings was not substantiated in the grounds for appeal.
4. The appellant's submissions in the fax received on 2 June 2020 do not address the underlying deficiency that the statement of grounds of appeal failed to meet the requirements of Rule 99(2) EPC for the three reasons set out above. The submissions attempt to make good that deficiency by filing the substantiation at a

later stage in the proceedings. This overlooks the requirement of Article 108 EPC that the statement setting out the grounds of appeal be filed within four months of notification of the contested decision. It also overlooks the fact that according to Rule 101(1) EPC any such deficiency can only be remedied within that four month period.

5. In view of the conclusion that the statement of grounds of appeal fails to meet the requirements of Rule 99(2) EPC, the appeal has to be rejected as inadmissible in accordance with Rule 101(1) EPC.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



L. Stridde

R. Lord

Decision electronically authenticated