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**Datasheet for the decision
of 12 June 2024**

Case Number: T 2486/22 - 3.4.02

Application Number: 16813200.9

Publication Number: 3384474

IPC: G08B13/14

Language of the proceedings: EN

Title of invention:

SECURITY SYSTEM WITH FIXTURE AND TRACKING DEVICES FOR IN ROOM
SECURITY OF VALUABLES

Applicant:

Carrier Corporation

Relevant legal provisions:

EPC Art. 123(2), 111(1)
RPBA 2020 Art. 11

Keyword:

Added subject-matter (no)
Remittal for further prosecution (yes)

Decisions cited:

T 2619/11, T 1538/12



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Case Number: T 2486/22 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 12 June 2024

Appellant: Carrier Corporation
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 1 July 2022
refusing European patent application
No. 16813200.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair G. Decker
Members: C. Kallinger
F. J. Narganes-Quijano

Summary of Facts and Submissions

- I. The appellant filed an appeal against the decision of the examining division refusing European patent application No. 16 813 200.9 on the basis of Article 123(2) EPC.
- II. In the notice of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the main request. As a precautionary measure, the appellant requested oral proceedings.
- III. In the statement of grounds of appeal (see page 1), the appellant stated that it *"maintained the prior First to Ninth Auxiliary Requests to be considered in the event that the Main Request is rejected"*, filed auxiliary requests 10 to 39 and requested that the board *"use their discretion in order to consider all of the outstanding issues from the first instance Summons"*.

At the end of the statement of grounds of appeal (see page 15), the appellant stated that *"Oral Proceedings are not required if the Board are inclined to agree that the Main Request satisfies Article 123(2) EPC and the only Request the Board would decide against the Appellant is then that relating to consideration of Article 84 and/or consideration of novelty and inventive step."*

IV. *Claim 1 of the main request reads as follows:*

"1. A security system, comprising:

a fixture (12) comprising an electromechanical lock (12); and

a remote tracking device (14) in wireless communication with the electromechanical lock (12), which includes a lock transceiver (28) operable to wirelessly communicate with the remote tracking device in response to a disturbance of the remote tracking device;

wherein the wirelessly communication includes usage of a Bluetooth Low energy wireless protocol;

wherein the remote tracking device is operable to determine a relative position with respect to the fixture and communicate the position to the fixture; and

wherein the disturbance includes movement and/or light."

Reasons for the Decision

1. Main request - allowability of amendments -
Article 123(2) EPC

1.1 The examining division held that the amended claim 1 of the main request extended beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.

In particular, it argued that the combination of the features of claims 1, 4, 7, 8, 9, 18 and 21 of the application as originally filed did not provide a basis for justifying the amendments since originally filed claims 4, 7, 8 and 9 were each directly dependent on claim 1, and original claim 21 was dependent on independent claim 18.

With respect to paragraphs [0005] to [0025] of the originally filed description the examining division argued that these paragraphs directly reflected originally filed claims 1 to 21 and that the part "*[a] further embodiment of the present disclosure may include ...*" at the beginning of each paragraph suggested that different embodiments were meant.

Therefore, it was not possible for the person skilled in the art to unambiguously derive from these paragraphs any subject-matter beyond the originally claimed combinations of features.

- 1.2 The board is not convinced by the examining division's lines of argument for the following reasons.
 - 1.2.1 The appellant referred to the Guidelines for Examination (see the current version of the Guidelines for Examination in the European Patent Office, 2024, section H-IV 2.2, third paragraph, which is identical to section H-IV 2.2 of the version the appellant referred to) which state that *"the examining division needs to avoid disproportionately focusing on the structure of the claims as filed to the detriment of the subject-matter that the skilled person would directly and unambiguously derive from the application as a whole."* The board notes that this statement is based on decision T 2619/11.
 - 1.2.2 The board agrees with the appellant's argument that the examining division, contrary to the guidance given by the above cited section of the Guidelines and therefore contrary to decision T 2619/11, almost entirely relied on the claim structure to support the assertion that the combination of features of claim 1 of the main request was not originally disclosed. Considering the disclosed dependencies (original claims 4, 7, 8 and 9 depending solely on original independent claim 1 directed to a security system and original claim 21 depending solely on original independent claim 18 directed to an electromechanical lock), the examining division took the view that there was no prospect for the skilled person to understand that the features of originally filed claims 1, 4, 7, 8, 9, 18 and 21 may be combined.
 - 1.2.3 In contrast to the examining division's view, the board agrees with the appellant that the combination of features of claim 1 of the main request has a basis in

the disclosure of originally filed paragraphs [0005] to [0025].

- (a) The explicit statement that "*a further embodiment of the present disclosure may include [further features]" (emphasis added by the board) clearly expresses that the respective features are not meant as exclusive features of separate embodiments but the skilled person can derive directly and unambiguously that the features listed in the respective paragraphs can be combined. It is clear that some of the features are complementary (see e.g. paragraph [0008]: fixture is an electromechanical lock versus paragraph [0010]: fixture is a thermostat). This does, however, not affect the overall disclosure, as the skilled person immediately recognises that these features are meant as alternatives.*
- (b) Furthermore, it is evident for the skilled person that the method described in paragraphs [0015] to [0021] corresponds to the security system of paragraph [0005] as both relate to a fixture in wireless communication with a tracking device. The features disclosed in paragraphs [0015] to [0021] with respect to the method can be applied in the form of apparatus features in the corresponding security system. This includes, in particular, the configuration disclosed in paragraph [0021] which states that the fixture can include an electromechanical lock.
- (c) Lastly, paragraphs [0022] to [0025] describe an electromechanical lock. It is clear to the skilled person that the features described in relation to this electromechanical lock, in particular the lock

transceiver disclosed in paragraph [0022] and the Bluetooth Low energy wireless protocol disclosed in paragraph [0025], can be combined with the features of the security system disclosed in the preceding paragraphs in which, as set out above, the fixture can include an electromechanical lock. The fact that the corresponding original claims 1 and 18 were presented as independent from each other does not detract from this conclusion.

- 1.2.4 The appellant also referred to paragraph [0026] which states that *"[t]he foregoing features and elements may be combined in various combinations without exclusivity, unless expressly indicated otherwise."*
- 1.2.5 The board notes that such general statements cannot replace a direct and unambiguous disclosure, see T 1538/12, Reasons 1.1. However, as set out above, the board is of the opinion that paragraphs [0005] to [0025] do not disclose only the combinations found numerically in the claim dependencies. The skilled person understands that the various features are in fact disclosed as combinable.
- 1.2.6 Based on the above considerations, the board is of the opinion that the examining division's reasoning on particular features is flawed.

- (a) Comprising an electromechanical lock (see decision, point 1.3.1)

The examining division argued that originally filed claim 4 specified that *"the fixture is an electromechanical lock"* (emphasis by the examining division) and that the amended feature that the

fixture comprised an electromechanical lock had no basis in the original application.

The board is of the opinion that the skilled person would understand that the configuration disclosed in paragraph [0021] for the method, i.e. that the fixture includes an electromechanical lock, can be realised in the corresponding security system. The claimed configuration that the fixture comprises an electromechanical lock is therefore originally disclosed.

- (b) Specific signal, namely a disturbance, is communicated (see decision, point 1.3.2)

The examining division argued that originally filed claim 1 defined that a specific signal, namely a disturbance, is communicated. Amending claim 1 such that an unspecified, general communication takes place represented an unallowable intermediate generalisation.

The board is not convinced by this argument. Paragraph [0005] discloses a security system which includes a tracking device in wireless communication with the fixture *"to communicate a disturbance to the tracking device"*. This disclosure might be considered ambiguous since it is not entirely clear from the claim wording whether the disturbance is communicated to the tracking device, or whether it is a disturbance to (in the sense: of) the tracking device that is communicated. However, paragraph [0015] explicitly discloses *"determining a disturbance of a tracking device; and communicating the disturbance to a fixture"*. As discussed above, the features

disclosed in paragraphs [0015] to [0021] with respect to the method can be applied in the form of apparatus features in the corresponding security system.

This is also consistent with the detailed embodiment (see paragraph [0043]) according to which the tracking device sends a signal to the fixture in response to a disturbance of the tracking device (e.g. in the form of light or movement).

The board is therefore of the opinion that the feature that a remote tracking device wirelessly communicates with the remote tracking device in response to a disturbance of the remote tracking device has a basis in the application as originally filed.

- (c) Lock transceiver and Bluetooth Low energy wireless protocol (see decision, points 1.3.3 and 1.3.4)

The examining division argued that originally filed claims 1 and 18 were independent claims in the same category and that their combination was not originally disclosed. Similarly, the combination of originally filed claims 1 and 21 was not disclosed.

As set out above, the board is of the opinion that the features described in relation to the electromechanical lock, in particular the lock transceiver disclosed in paragraph [0022] and the Bluetooth Low energy wireless protocol disclosed in paragraph [0025], can be combined with the features of the security system.

- (d) Relative position and type of disturbance (see decision, points 1.3.5 and 1.3.6)

The examining division argued that originally filed claims 7, 8 and 9 were all directly dependent on claim 1. Therefore a combination of features of claims belonging to different dependency chains was not disclosed by the set of original claims. Furthermore, such a combination could not be justified by the claim-like clauses in paragraphs [0005] to [0025].

The board is not convinced by this line of argument since, as already mentioned above, it puts too much focus on the claim structure.

Paragraph [0011] states that the disturbance can include movement, and paragraph [0012] states that the disturbance can include light. The skilled person immediately recognises that the two different forms of disturbance are not mutually exclusive and can occur at the same time.

This is also consistent with the detailed embodiment which states that "*[a]lternatively, or in addition, the position module 50 may include a light sensor*" (see paragraph [0038], emphasis added by the board).

Furthermore, the skilled person immediately understands that the features disclosed in paragraph [0013], namely the determination of a relative position, are not related to a different, non-combinable embodiment. Instead, they represent a further development of the disclosed security system.

Therefore, the combination of the features in paragraphs [0005], [0011], [0012] and [0013] is directly and unambiguously disclosed for the skilled person.

- 1.2.7 In conclusion, the board is of the opinion that the skilled person, despite the restricted claim dependencies of the originally filed claims, immediately understands that the features disclosed in the originally filed paragraphs [0005] to [0025] are not disclosed in isolation but correlate to each other and can be combined, as long as they are not mutually exclusive.

As a consequence, the combination of features in claim 1 of the main request is directly and unambiguously disclosed to the skilled person, using their common general knowledge, from paragraphs [0005], [0011], [0012], [0013], [0015], [0017], [0022] and [0025]. The non-contradictory combination does not include any technical information or any technical effect that could not be explicitly or implicitly derived from the original application.

Therefore, the amendments in claim 1 of the main request meet the requirements of Article 123(2) EPC.

2. Remittal

- 2.1 Under Article 11 RPBA, a case is not to be remitted to the department whose decision was appealed unless special reasons present themselves for doing so. This provision must be read in conjunction with Article 12(2) RPBA which states that the primary object

of the appeal proceedings is to review the decision under appeal in a judicial manner.

- 2.2 Upon receipt of the summons to oral proceedings before the examining division, which raised objections with respect to Articles 123(2), 84 and 54 EPC, the applicant filed amended claims according to a new main request and nine auxiliary requests. In a further submission, the appellant withdrew its request for oral proceedings and requested a written decision.

The examining division exclusively dealt with the objection under Article 123(2) EPC against the main request and all auxiliary requests in the decision under appeal. Therefore, clarity, novelty and inventive step of the present claims have not been assessed yet.

- 2.3 Not remitting the case to the examining division would require the board to perform these tasks in both first- and last-instance proceedings and to effectively replace the examining division rather than review the contested decision in a judicial manner (Article 12(2) RPBA). It follows that special reasons within the meaning of Article 11 RPBA 2020 present themselves.

- 2.4 Therefore, the board, exercising its discretion under Article 111(1) EPC in conjunction with Article 11 RPBA, considers it appropriate to remit the case to the examining division for further prosecution on the basis of the main request.

3. Decision without oral proceedings

The appellant explicitly stated that oral proceedings were not required if the board was of the opinion that the claims of the main request met the requirements of Article 123(2) EPC. The board therefore decided not to summon to oral proceedings but instead to issue this decision in writing.

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 for further prosecution.

The Registrar:

The Chairman:



L. Gabor

G. Decker

Decision electronically authenticated