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Aktenzeichen / Case Number / N^o du recours : T 490/88 - 3.5.1

Anmeldenummer / Filing No / N^o de la demande : 83 104 175.1

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Bezeichnung der Erfindung: Apparatus for sensing a magnetic stripe on a
Title of invention: recording media
Titre de l'invention :

Klassifikation / Classification / Classement : G06K 7/08

ENTSCHEIDUNG / DECISION

vom / of / du 14 November 1989

Anmelder / Applicant / Demandeur : OMRON TATEISI ELECTRONICS Co.

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 123(2) EPC

Schlagwort / Keyword / Mot clé : "Generalisation of specific feature in claim -
not allowed, no basis (explicit or implicit) in
application as filed."

Leitsatz / Headnote / Sommaire



Case Number : T 490/88 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 14 November 1989

Appellant : OMRON TATEISI ELECTRONICS CO.
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Decision under appeal : Decision of Examining Division 066
of the European Patent Office
dated 18 05 1988 refusing European
patent application No. 83 104 175.1
pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : E. Persson
Members : W.J.L. Wheeler
Y. van Henden

Summary of Facts and Submissions

- I. Appellant's European patent application No. 83 104 175.1 was refused by a decision of the Examining Division dated 18 May 1988. That decision was based on Claims 1 to 3 filed with a letter dated 29 February 1988.
- II. The reason given for the refusal was that the subject-matter of the claims extended beyond the content of the application as filed, thereby infringing Article 123(2) EPC. According to paragraph 2 of part II of the decision under appeal, the application as originally filed related to an apparatus for sensing a magnetic stripe by means of a magnetic head member and there was nothing in the original application which would tell the skilled man, expressly or by implication, that he could apply the invention to stripes other than magnetic stripes.
- III. On 22 July 1988 the Appellant filed a notice of appeal against that decision. The fee for appeal was paid on the same day. The Statement of Grounds was filed on 27 September 1988, accompanied by a new set of Claims 1 to 3, which were the subject of an auxiliary request.
- IV. The originally filed Claim 1 reads as follows:

"1. An apparatus for sensing a magnetic stripe disposed on a flat recording media which is inserted into the apparatus in a direction perpendicular to the stripe, comprising:

a magnetic head member (29,51,81 and 94),

supporting means (33,58,71,80 and 97) for supporting said magnetic head member for movement having a component

perpendicular to the direction of the insertion of said recording media into the apparatus, and

driving means (36,56,75,87 and 95) in response to the insertion of said recording media for moving said supporting means so as to move said magnetic head member along said stripe so that said magnetic head member scans the magnetic stripe at least in part thereof to sense the presence of the stripe."

Claim 1 as refused by the Examining Division reads:

"1. An apparatus for sensing a stripe having data recorded therealong and disposed on a flat recording media which is inserted into the apparatus in a direction perpendicular to the stripe, c h a r a c t e r i z e d by

normally closed shutter means (24) for stopping the insertion of said recording media at a predetermined point,

data reading means (25) disposed behind said shutter means (24) for reading predetermined data recorded on said stripe upon the opening of said shutter means,

a head member (29,51,81) disposed in front of the shutter means,

supporting means (33,44,45,58,59,70,71,80,89) for supporting said head member for a movement having a component perpendicular to the direction of the insertion of said recording media into the apparatus,

and driving means (30,56,74-77,82,86-88) for driving the supporting means in response to the insertion of the recording media, said driving means being a mechanism for

transferring the mechanical force applied by the inserted recording media to said supporting means so that the movement of the recording media is converted into the movement of said head member having a component perpendicular to the direction of the insertion of said recording media into the apparatus, imparting to said head member a movement along at least part of the stripe."

Claim 1 of the auxiliary request reads:

"1. An apparatus for sensing a magnetic stripe disposed on a flat recording media which is inserted into the apparatus in a direction perpendicular to the stripe, characterized by

normally closed shutter means (24) for stopping the insertion of said recording media at a predetermined point,

data reading means (25) disposed behind said shutter means (24) for reading predetermined data recorded on said stripe upon the opening of said shutter means,

a magnetic head member (29,51,81) disposed in front of the shutter means,

supporting means (33,44,45,58,59,70,71,80,89) for supporting said magnetic head member for a movement having a component perpendicular to the direction of the insertion of said recording media into the apparatus,

and driving means (30,56,74-77,82,86-88) for driving the supporting means in response to the insertion of the recording media, said driving means being a mechanism for transferring the mechanical force applied by the inserted recording media to said supporting means so that the

movement of the recording media is converted into the movement of said magnetic head member having a component perpendicular to the direction of the insertion of said recording media into the apparatus, imparting to said magnetic head member a movement along at least part of the stripe."

Claims 2 and 3 of the main and auxiliary requests are dependent on the respective Claim 1.

- V. Oral proceedings were held on 14 November 1989. The Appellant argued essentially that a skilled person would read the application as originally filed as if the word "magnetic" were not there. He would regard its presence as a mistake, realising that it was not necessary for the stripe to be magnetic, as may be seen from the prior art document GB-A-1 487 001, page 3, lines 42 to 57. The nature of the stripe, whether it be magnetic or not, and that of the head member, had no relationship with the rest of the apparatus.

- VI. The Appellant requests that the decision under appeal be set aside and a patent granted on the basis of the following documents:

Main request:

Claims: 1 to 3 filed on 29 February 1988;

Description: pages 6 to 14 as originally filed,
pages 1 to 5 and page 17, filed on
29 February 1988,
pages 15 and 16 filed during the oral
proceedings on 14 November 1989;

Drawings: Figures 1 to 10 as originally filed.

Auxiliary request:

Claims: 1 to 3 filed on 27 September 1988 (with correction of the spelling of "magnetic" in line 10 of the claim);

Description: pages 6 to 14 as originally filed, pages 1 to 5 and page 17, filed on 29 February 1988, pages 15 and 16 filed during the oral proceedings on 14 November 1989, with amendment of "predetermined" in line 19 on page 3 to read "magnetic";

Drawings: Figures 1 to 10 as originally filed.

Reasons for the Decision

- 1 The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. As far as the Appellant's main request is concerned, the only issue to be decided is whether the claims filed on 29 February 1988 contravene Article 123(2) EPC, in other words, whether they contain subject-matter which extends beyond the content of the application as filed.
 - 2.1 The Board agrees with the Appellant to the extent that if a person skilled in the art would read the application as filed as if the word "magnetic" were not there, then the application as filed would provide an implicit basis for stripes and head members other than magnetic stripes and magnetic head members, and the main request would not infringe Article 123(2) EPC. However, the Board is not persuaded that this is in fact the case.

2.2 The Board has studied the application as filed and it appears that the only stripes and head members expressly mentioned therein are magnetic stripes and magnetic head members. The description as originally filed opens with the statement: "This invention relates to an apparatus for sensing a magnetic stripe disposed on a flat-shaped recording media, such as a magnetic card or a passbook, and more particularly to an apparatus for sensing if a predetermined recording magnetic stripe is present ...". There follows a review of a conventional card receiving apparatus employed in an automatic teller machine including a magnetic stripe sensor. The primary object of the invention is stated to be "to provide an apparatus capable of sensing a predetermined magnetic stripe ...". Further objects are stated to be "to provide apparatus including a moving magnetic head ..." and "to provide an improved apparatus with a simplified construction for sensing a magnetic stripe ...". The statement of invention, the brief description of the drawings, and the description of the preferred embodiments are all consistently confined to apparatus for sensing a magnetic stripe.

2.3 There is a statement on page 5, lines 18 and 19, to the effect that another recording media may be employed, which, when taken out of context, might be said to imply that stripes and head members other than magnetic stripes and magnetic head members may be employed. However, it appears that in the context of the application as a whole, the term "recording media" does not refer to the stripe but to the card or passbook on which the stripe is disposed. Thus, it appears that the statement on page 5, lines 18 and 19, means that the card 20 in the embodiment shown in Fig. 1 may be replaced by another medium (such as a passbook), but it would still have a magnetic stripe disposed on it.

- 2.4 Furthermore, it appears from the last paragraph of the description as filed that, although many changes and modifications may be made, it was not intended to depart from the scope of the appended claims. And the claims in the application as filed are confined to apparatus for sensing a magnetic stripe.
- 2.5 The Appellant has not pointed to anything in particular in the application as filed which might provide a basis for stripes and head members other than magnetic stripes and magnetic head members.
- 2.6 In view of the fact that the description as originally filed contains more than fifty references to "magnetic", the Board finds it difficult to accept that a person skilled in the art would simply read it as if the word "magnetic" were not there. It appears to the Board that, in the light of the originally filed description, the person skilled in the art would not be so surprised to find the word "magnetic" in the claims as to immediately think, without further ado, that it must be a mistake. Now it may well be that, upon reflection, and using his imagination, a skilled person would get the idea that he could use the supporting means and driving means specified in the claims with other types of head members. This idea, however, would be his own idea, resulting from his own thinking.
- 2.7 Thus, in the opinion of the Board, the application as filed does not provide a basis, explicit or implicit, for stripes and head members other than magnetic stripes and magnetic head members.
- 2.8 It is established jurisprudence that the test for compliance with Article 123(2) EPC is basically a novelty test and that no new subject-matter must be generated by

the amendment, see paragraph 3 of the reasons given in the decision in T 201/83 (OJ EPO 1984, 481). Particularly relevant to the present case is paragraph 2 of the reasons in the decision in T 66/85 (OJ EPO 1989, 167), according to which Article 123(2) EPC has to be interpreted as meaning that where a feature is entirely omitted from a claim, thus broadening its scope, such excision is not permissible, whether this feature appears relevant or not to the features which represent the inventive concept of the subject-matter claimed, unless there is a basis for the broadened claim in the original application. Such a basis need not be presented in express terms but it must be sufficiently clear to a person skilled in the art to be unambiguously recognisable as such.

- 2.9 The fact that the prior art document GB-A-1 487 001, which is not referred to in the originally filed description although a reference thereto has since been introduced, does not insist on the presence of a magnetic stripe does not appear to be relevant in the present case. There are in fact several features of the present invention which are not disclosed in that document, such as movement of the detecting head having a component perpendicular to the direction of the insertion of the recording media, but that does not provide a basis for omitting any of these features from the claims of the present application.
- 2.10 Since the Board is of the opinion that the possibility of using stripes and head members other than magnetic stripes and magnetic head members is not unambiguously recognisable from the application as filed, the Board is unable to grant the Appellant's main request, as this would be contrary to Article 123(2) EPC.

3. As far as the Appellant's auxiliary request is concerned, the Board notes that the claims are not open to objection under Article 123(2) EPC. The Board also notes that the Examining Division considers such claims to be allowable (see paragraph 4 of the decision under appeal). The Board sees no reason to disagree with the Examining Division.

Order

For these reasons, it is decided that:

1. The main request is rejected.
2. The decision under appeal is set aside.
3. The case is remitted to the first instance with the order to grant a patent in accordance with the Appellant's auxiliary request (paragraph VI above).

The Registrar:


M. Beer

The Chairman:


E. Persson

