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D E C I S I O N
of 29 January 2002

Case Number: T 0027/98 - 3.4.1

Application Number: 91303416.1

Publication Number: 0453258

IPC: G07F 5/24

Language of the proceedings: EN

Title of invention:

Controller for an automatic vending machine

Patentee:

KABUSHIKI KAISHA NIPPON CONLUX

Opponent:

National Rejectors, Inc. GmbH

Headword:

Controller for an automatic vending machine/KABUSHIKI KAISHA
NIPPON CONLUX

Relevant legal provisions:

EPC Art. 54(1)(2)

Keyword:

"Novelty (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0027/98 - 3.4.1

D E C I S I O N
of the Technical Board of Appeal 3.4.1
of 29 January 2002

Appellant: KABUSHIKI KAISHA NIPPON CONLUX
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Representative: Patentanwälte
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 28 October 1997
revoking European patent No. 0 453 258 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: G. Davies
Members: H. K. Wolfrum
G. Assi

Summary of Facts and Submissions

- I. The appellant (patent proprietor) lodged an appeal against the decision of the opposition division, dispatched on 28 October 1997, revoking European patent No. 0 453 258. The notice of appeal was received on 24 December 1997. The appeal fee was paid on 29 December 1997. On 25 June 1998 a statement of grounds of appeal was filed. A previous letter of 12 February 1998 enclosing the statement of grounds of appeal had not reached the file.
- II. In an interlocutory decision of 7 May 1999, the Board granted re-establishment of rights in relation to the filing of the written statement of grounds of appeal. Consequently, the appeal was deemed admissible.
- III. Pursuant to Article 100(a) EPC, the opposition was based on the grounds of lack of novelty and inventive step (Articles 52(1), 54 and 56 EPC).
- IV. Oral proceedings were held on 29 January 2002.
- V. The appellant requested that the contested decision be set aside and the European patent maintained on the basis of claims 1 to 3 filed on 25 June 1998 (main request) or claims 1 and 2 as requested in the grounds of appeal dated 12 February 1998 and filed on 25 June 1998 (auxiliary request).
- VI. The respondent (opponent) requested that the appeal be dismissed.
- VII. In the opposition and appeal proceedings reference was made *inter alia* to a prior use, in support of which the

following documents were presented:

- E1: Drawing G 51.1810-1E;
- E2: Drawing G 19.0581-1;
- E3: SEL "Spezifikation Münzprüfer und Münzsortierer";
- E4: Report No. 32/85;
- E5: Letter dated 24 January 1989 sent by SEL to National Rejectors, Inc.;
- E6: Notes relating to telephone conversations between Mr Hermann (National Rejectors, Inc.) and Mr Pöschko (SEL); and
- E7: Test evaluation "Test Nr. 1357 b" of 9 August 1988.

VIII. Independent **claim 1** of the **main request** reads as follows:

"1. A controller for an automatic vending machine comprising :

a country setting switch (13) for setting the operation of the machine on the basis of a specification for each of a plurality of countries;
means (14) for storing parameters corresponding to the specification for each country; and

control means (12) for reading from the storing means (14) a parameter value corresponding to the specification selected by the country setting switch (13) in correspondence to the selective operation of

the country selecting switch and controlling the appropriate elements of the machine in accordance with the parameter, characterized in that :

the storing means (14) stores as a parameter value a distributing manner to distribute an inserted coin for each of the countries; and

the control means (12) reads from the storing means (14) the distributing manner in correspondence to the specification selected by the country setting switch (13) and controls the distribution of the coin in accordance with the distributing manner."

A controller according to independent **claim 1** of the **auxiliary request** is further characterized in that

"the storing means (14) stores a threshold level for an inserted coin used in each of the countries as a parameter value; and

the control means (12) reads from the storing means (14) a threshold level corresponding to the specification selected by the country selecting switch and judges the inserted coin in accordance with the read threshold level."

IX. The appellant essentially relied on the following submissions:

On the basis of the evidence provided by the opponent, it remained questionable that the public could indeed have gained knowledge about the technical features of a controller in the form of coin acceptor for a public telephone according to the alleged prior use. Documents E1 to E4, which had been cited as evidence for technical features of the controller, constituted in-

house documentation of the opponent. There was no unambiguous evidence, how, when and where a controller referred to in documents E1 to E4 was in public use. The further documents E5 to E7 did not prove beyond any doubt that a controller had in fact been available on the market and freely sold without an obligation of confidentiality. But even supposing that such a device had been incorporated in a public telephone, no member of the public would have had access to technical information concerning the internal structure and operation of the controller, since it would normally have been sealed so as not to be manipulated even by employees of the telephone company, as was apparent from document E4. Moreover, even if a controller having the circuitry shown by document E1 had been dismantled it would not have been possible to determine the contents of its memories.

As far as the technical features of the controller according to the alleged prior use were concerned, no evidence had been provided that the controller possessed a country-setting switch. Document E2, relied on by the opponent in this respect, concerned a testing device which did not form part of the controller nor of a public phone within which the controller was to be used. Thus, in view of the fact that the testing device according to E2 served only for in-house testing by the opponent, no technical information relating to its structure or function was publicly available. Moreover, in the light of one of the notes of telephone conversations included in document E6, according to which controllers of the type G18 had to be sent back to the opponent in order to be adjusted to another currency, it appeared that the country selection could not be made by simply changing the position of a switch

but was a hard-wired feature which could only be changed in the factory.

Furthermore, it was doubtful whether a coin acceptor of a public telephone could be considered at all as a controller for a vending machine. Finally, as far as the novelty of claim 1 of the auxiliary request was concerned, the documents presented by the opponent did not provide any evidence that different thresholds were used for different country settings.

- X. The respondent's submissions may be summarized as follows:

The patentee had contested the fact of a public prior use of a controller of the type G18 in a public telephone of the type Fw23 for the first time in the debate during the oral proceedings before the Board of Appeal. It should not be allowed to go back on the position defended in the statement of the grounds of appeal.

In any case, documents E5 to E7 showed that public telephones of the type Fw23 including a controller of the type G18 had been sold to the German Bundespost before the priority date of the opposed patent. These sales constituted a public prior use, since the customer had experts who were capable of recognizing the technical features of the sold device. As was apparent from documents E1 to E4, the sold telephones showed all the features defined in claim 1 of the main request. Although document E2 admittedly did not relate to the controller and telephone as such, its purpose was to simulate the telephone unit in its cooperation with the controller G18. Thus E2 provided unambiguous

evidence that the controller and telephone included a country-setting switch. It followed that the subject-matter of claim 1 of the main request lacked novelty.

Although documents E1 to E7 did not explicitly mention the additional features of claim 1 of the auxiliary request, the skilled person would have immediately understood that the operation of the coin acceptor required in order to distinguish acceptable coins from counterfeit coins a comparison of measured coin parameters with reference or threshold values. Thus, the subject-matter of claim 1 of the auxiliary request, even if it were considered novel, in any case lacked inventive step.

Reasons for the Decision

1. Amendments

Claim 1 of the main request is a combination of claims 1 and 4 of the patent as granted, its content corresponding to that of originally-filed claim 4.

Claim 1 of the auxiliary request adds the features specified in claim 3 of the patent as granted and disclosed *inter alia* in originally-filed claim 3.

Therefore, the Board is satisfied that the amended claims of both requests comply with the requirements of Articles 123(2) and (3) EPC.

2. Circumstances of the use of a G18-type coin acceptor in a Fw23 public telephone.

2.1 Document E5 concerns a letter dated 24 January 1989 from the company SEL to the opponent accompanying the return of nine coin acceptors of the type G18.0613 and requesting repair and modifications. Annexed to E5 are two sheets which constitute notes concerning defects in Fw23 telephones of SEL and originate from the "Fernmeldezeugamt Malsch". The defects indicated concern a faulty acceptance of certain coins and a defect in the sorting unit for the coins.

Document E6 is a collection of notes of Mr Hermann, an employee of the opponent, concerning telephone conversations with Mr Pöschko, an employee of SEL, in July of 1988. In a note dated 20 July 1988, reference is made to eight coin acceptors of the type G18.0613 which had been delivered on 6 June 1988 to SEL following repair and to the fact that SEL should be contacted by the responsible sales representative of the opponent. In a further note dated 12 July 1988, reference is made to the fact that SEL had received seven coin acceptors of the type G18.0613 from the German Bundespost for reprogramming to German/Austrian currencies.

Document E7 concerns a test report dated 9 August 1988 of a coin acceptor of the type G18.0613 which had been sold to the customer SEL. Results are given for various coins of three currencies.

2.2 In the Board's opinion, the evidence provided by documents E5 to E7 shows that coin acceptors of a type programmed so as to be capable of accepting different currencies had been sold by the opponent before the priority date (18 April 1990) of the present patent. One customer had been the company SEL, which had built

the coin acceptors into public telephones of the type Fw23, which in turn had been sold to the customer Deutsche Bundespost also before the claimed priority date.

- 2.3 As regards the doubts raised by the appellant with respect to the act of sale, in particular the alleged confidentiality concerning the coin acceptors G18 and their incorporation in telephones of the type Fw23, there is no indication, in the present case, that any secrecy agreement was made.

This is supported by the fact that the features of the claimed controller do not concern technical aspects of its internal construction or circuit layout, i.e. information which a manufacturer might indeed wish to keep secret, but only general functions which the controller is capable of performing, i.e. functions which are normally sought after by a customer and a manufacturer normally presents to the public of interested customers in the relevant technical field. As a matter of fact, the claims 1 of the appellant's requests simply define three basic features, i.e. a control means, a storing means and a country-setting switch, all of which are exclusively defined by their functions. In the case of the used coin acceptor G18, it is the final customer, i.e. the telephone company, which specifies, via the manufacturer of the public telephone, the required functions of the coin acceptor, such as for instance the capability of an automated operation with different currencies. Therefore, such functions cannot be the subject of a manufacturing secret of the supplier of the controller.

- 2.4 For the above reasons, the Board has come to the

conclusion that the respondent has convincingly demonstrated the prior public use of a coin acceptor of the type G18 in a public telephone of the type Fw23 before the priority date of the present patent.

- 2.5 Even from a procedural point of view, the appellant's line of argument is not convincing. The Board notes that, during the opposition proceedings, the appellant did not dispute the availability to the public with regard to the alleged prior use objection. Nor did the appellant, during the written appeal procedure, contest the decision of the first instance in this respect. On the contrary, with the statement setting out the grounds of appeal, narrower claims according to the main and auxiliary requests were filed, which fact can be interpreted as implying that the appellant accepted the conclusion drawn by the opposition division on the question of public availability.

3. *Novelty*

3.1 Main request

- 3.1.1 Document E1 constitutes a circuit diagram which is labelled "G18 2x6 Kanal - EMP SEL" and is dated "Freigabe 23.11.87". The circuit comprises a microprocessor as indicated by "CPU IC1" which is connected via data busses to memories (EPROMS "IC8" and "IC9"). The diagram further shows signal lines MS1 to MS4, MP1 and R exiting from the microprocessor and being characterized as "1. MÜNZE" to "6. MÜNZE", respectively. Moreover, data lines "GATE 0" and "GATE 1" are shown to extend from the microprocessor to electromagnetic actuators. Finally, data lines "SPBD" and "SPBA" are shown as inputs to the circuit.

Document E2 is another circuit diagram labelled "Prüfgerät G18 f. SEL (Fw23)" and dated "Freigabe 17.12.87". The circuit has parallel inputs for signals MS1 to MS4, MP1 and R as well as SPBD and SPBA. The latter signal inputs are connected to "Sperrren BD" and "Sperrren BA", respectively, formed by switches S7 and S8.

Document E3, dated 3 December 1985, is a specification from the company SEL for a coin acceptor for use in a telephone of the type Fw23. It summarises the various technical functions to be performed and specifications to be met by the coin acceptor. Coins have to be tested and, when accepted, to be distributed according to their value to different storing places (cf. point 2.2: *"Gut geprüfte Münzen müssen nach Münzsorten getrennt ausgegeben werden. Es muß sichergestellt sein, daß die Münzen der verschiedenen Sorten, in den dem Münzwert zugeordneten Speicher gelangen."*). For use of the telephone in border regions, the coin acceptor has to be capable of accepting different currencies (cf. in particular point 2.1.7: *"Für den Einsatz von Münzfernsprechern im grenznahen Gebiet muß der Münzprüfer auch neben den deutschen Münzen bedarfsweise ausländische Münzsorten akzeptieren und sortieren."*). The data concerning the various currencies have to be programmable (point 2.1.7: *"Nachstehende Münzsorten müssen bedarfsweise programmierbar sein"*). In a table included in point 2.1.7 an overview is given of the coins of specific values from a variety of foreign currencies which could be accepted instead of a corresponding German coin. Point 10.1, referring to the electric interface between the coin acceptor and the telephone unit, lists in subpoint 10.1.1 signals SPBD and SPBA having a blocking function for coins of German

and foreign currency ("*Blocksperrung deutsche Münzen*", "*Blocksperrung ausländ. Münzen*"), respectively, and shows in the table "*Codierung*" included in subpoint 10.1.2 an example for the specific distribution of respective sets of foreign and German coins to a common set of electrical channels ("*Kanal*" 1-6) and coin paths ("*Münzaustritte*" 1-5).

Document E4 is a report about a visit by representatives from the customer SEL on 14. and 15.11.85 to the company of the opponent. The report summarizes technical requirements concerning the interface between the telephone Fw23 and a coin acceptor. In the section "*Technische Änderungen*", reference is made to a switching means allowing the telephone to accept foreign coins as well, a feature which would be of interest in border areas. Specifically mentioned are inputs "SPD" and "SPA" for the blocking of German coins and foreign coins, respectively.

- 3.1.2 It is evident from the cited documents, that a coin acceptor of the type G18 was used in a telephone of the type Fw23 and served as a controller to verify the genuineness of inserted coins, sorting accepted coins and rejecting counterfeit coins (cf. for instance point 1.1 in E3: "*Gutgeprüfte und zugelassene Münzen sind nach Sorten auszugeben.*"). Considering that a public telephone provides a service to the public, so that a telephone can be considered to be a vending machine in the general meaning of the term, the used coin acceptor constitutes a controller for an automatic vending machine within the terms of claim 1 under consideration. This finding is further supported by the fact that, according to present claim 1, patent

protection is sought for any controller which is **suitable for use** in a vending machine, a requirement which has to be considered to be met by the used coin acceptor which could in principle operate without fundamental technical modifications in any kind of vending machine.

Moreover, documents E1 to E3 provide evidence that the coin acceptor G18 in the telephone Fw23 was capable of accepting different currencies, the selection being made by means of signals applied via lines SPBD or SPBA. In this context, the appellant's submission that document E2 referred to a device which did not form part of the controller and the public telephone and was not publicly available, although being correct in itself, disregards the fact that this device was intended to simulate the function of the telephone Fw23. Thus, it has to be concluded that E2 is illustrative of the operation of the coin acceptor G18 within the telephone Fw23. For these reasons, the prior used coin acceptor operating in the public telephone is considered as comprising a country-setting switch within the meaning of claim 1 under consideration.

Having regard to the fact that the coin acceptor G18 is operated in an automated manner and to the specifications given in document E3 (cf. in particular the requirement of programmability indicated in point 2.1.7), control means and storing means within the meaning of claim 1 under consideration are readily identified in the CPU and EPROM memories, respectively, shown in document E1. Finally, in the light of the information provided by document E3 concerning the distribution of German and foreign coins (cf. in particular point 10.1.2), it has to be concluded that

the control means and storing means of the coin acceptor G18 operate in the same manner as specified in the characterizing part of claim 1 of the main request.

3.1.3 In consequence, the prior used coin acceptor G18 in the public telephone Fw23 shows all the features of the controller according to claim 1 of the main request.

3.2 Auxiliary request

The specification according to document E3 repeatedly makes reference to the requirement that the coin acceptor has to be capable of verifying coins of a specific selected currency by distinguishing them from those of other currencies or counterfeit coins (cf. in particular point 2.1.2: "*Es muß sichergestellt sein, daß ... ähnliche Fremdmünzen abgewiesen werden*"; and point 2.1.7: "*... neben den deutschen Münzen bedarfsweise ausländische Münzsorten akzeptieren und sortieren. ... Diese Münzsorten müssen einwandfrei von deutschen Münzen unterscheidbar sein*"). Furthermore, E3 explicitly points to the requirement that expected variations of the set data with respect to the respective typical value have to be indicated (cf. point 2.1.5: "*Die zu erwartenden Abweichungen der Einstelldaten bezogen auf den jeweils typischen Wert sind anzugeben.*"). In the Board's view, for such an operation of verification and discrimination to be performed by the coin acceptor, it is indispensable that its control means be capable of an automated comparison between at least one measured parameter value for each coin of a selected currency and a corresponding reference or threshold value available within the storing means.

It follows that the prior used coin acceptor G18 also shows all the features included in claim 1 of the auxiliary request.

4. For these reasons, the independent claims of the main request and the auxiliary request do not comply with the requirements of Articles 52(1) and 54(1) and (2) EPC.

5. In summary, having regard to the patent documents according to the appellant's main and auxiliary requests, the ground of lack of novelty set out in Article 100(a) EPC prejudices the maintenance of the European patent.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

R. Schumacher

G. Davies