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**D E C I S I O N**  
**of 11 June 2002**

**Case Number:** T 0236/00 - 3.5.1

**Application Number:** 92907631.3

**Publication Number:** 0576532

**IPC:** G06F 17/60, G07G 1/14, A47F 10/02

**Language of the proceedings:** EN

**Title of invention:**  
Information System

**Patentee:**  
Esel-Krabbe Systems A/S

**Opponent:**  
Pricer AB

**Headword:**  
Information system/ESEL-KRABBE

**Relevant legal provisions:**  
EPC Art. 52(1), 56

**Keyword:**  
"Inventive step - (no)"

**Decisions cited:**  
G 0010/91, G 0001/95

**Catchword:**  
-



Case Number: T 0236/00 - 3.5.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.1  
of 11 June 2002

**Appellant:** Esel-Krabbe Systems A/S  
(Proprietor of the patent) Porthusvej 9  
DK-3490 Kvistgaard (DK)

**Representative:** Kjerrumgaard, Bent  
Budde, Schou & Ostenfeld A/S  
Vester Søgade 10  
DK-1601 Copenhagen V (DK)

**Respondent:** Pricer AB  
(Opponent) Kristallen  
S-754 51 Uppsala (SE)

**Representative:** Lindgren, Anders  
Dr. Ludwig Brann Patentbyrå AG  
P.O. Box 1344  
Drottninggatan 7  
S-751 43 Uppsala (SE)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 16 December 1999  
revoking European patent No. 0 576 532 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** S. V. Steinbrener  
**Members:** R. Randes  
P. Mühlens

## Summary of Facts and Submissions

- I. This appeal is against the decision by the Opposition Division to revoke European patent No. 0 576 532.
- II. The Patent had been opposed on the basis of lack of novelty and inventive step. In particular, the Opponent had disputed the novelty of the subject-matter of the independent claims and some of the dependent claims, arguing that the subject-matter of the remaining dependent claims lacked inventive step.

The statement of grounds of opposition referred *inter alia* to the following documents:

DO1: WO-A-90/14630

DO2: S-A-4 888 709

DO3: GB-A-2 231 994

- III. In the course of opposition proceedings the Opponent also relied upon the following document:

DO7: US-A-4 821 291.

- III. In its decision the Opposition Division found that, contrary to objections raised by the Patentee, it had the discretion to also consider the inventive step of the subject-matter of the independent claims. The Opposition Division held that claim 1 as granted lacked novelty over DO3 (point 2.3) and questioned whether it showed inventive step over DO7 (point 2.6). Claim 1 of the first auxiliary request (AUX1) was held to lack inventive step having regard *inter alia* to DO3. Claim 1

of the second auxiliary request (AUX2) was held to contain added subject-matter.

- IV. The Patentee appealed, requesting, as a main request, maintenance of the patent as granted and, as an auxiliary request, maintenance on the basis of the auxiliary request AUX2 decided on by the Opposition Division.

The Appellant argued that the Opposition Division had not properly construed the terms in the claims "interrogation signal" and "verification signal" in the light of the description, Article 69(1) EPC. The Appellant also objected, relying on decision G1/95, to the fact that, although the grounds of opposition had only challenged the inventive step of some of the dependent claims, the Opposition Division had also allowed the inventive step of the independent claims to be discussed for the first time in the oral proceedings. The Appellant also made an auxiliary request for oral proceedings.

In a reply, the Respondent contested the Appellant's arguments and maintained his view that neither of the appellant's requests was allowable.

- V. In an annex to a summons to oral proceedings the Board stated its provisional opinion that the subject-matter of claim 1 as granted appeared to be anticipated by the cited prior art and that claim 1 according to auxiliary request AUX2 appeared to contain added subject-matter. Furthermore, it was held that the Opposition Division appeared to have exercised its discretion correctly to admit the ground of inventive step against the invention as a whole in the oral proceedings.

- VI. In a fax dated 28 May 2002 the Respondent stated that he would not be attending the oral proceedings, since in the light of the state of the file the costs of doing so could not be justified.
- VII. Oral proceedings were held on 11 June 2002 in the absence of the Respondent. The Appellant withdrew the earlier request for maintenance of the patent as granted and filed an amended main request, requesting grant of a patent on the basis of claim 1 of the new main request filed in the oral proceedings, or, as an auxiliary request, on the basis of claim 1 of the "first supplementary auxiliary main claim" (AUX1) set out in annex 1 to the appealed decision.

Claim 1 of the main request, which is an amended form of the "second supplementary auxiliary main claim" (AUX2) decided on by the Opposition Division, reads as follows, additions to claim 1 as granted being shown in **bold**:

"An information system comprising a master station (2,10) adapted for transmitting an infrared signal and for receiving an infrared signal, and at least one information unit (30, 40) for the presentation of visual information, said information unit comprising a visual display and a digital memory, said unit being adapted for detecting an infrared signal and for emitting an infrared signal, and for showing on its display information depending upon a signal transmitted from the master station, characterized by said information unit being capable of detecting a special interrogation signal transmitted from the master station and of responding hereto by emitting a verification signal, and said master station being

capable of receiving and detecting said verification signal, **said verification signal being emitted from said individual display unit only upon demand from said master station, thereby saving power since the individual display unit does not have to respond to each and every command signal received from said master station.**"

Claim 1 of the auxiliary request reads as follows, additions to claim 1 as granted being shown in **bold**:

"An information system comprising a master station (2,10) adapted for transmitting an infrared signal and for receiving an infrared signal, and at least one information unit (30, 40) for the presentation of visual information, said information unit comprising a visual display and a digital memory, said unit being adapted for detecting an infrared signal and for emitting an infrared signal, and for showing on its display information depending upon a signal transmitted from the master station, characterized by said information unit being capable of detecting a special interrogation signal transmitted from the master station and of responding hereto by emitting a verification signal, and said master station being capable of receiving and detecting said verification signal, **and said information unit (30, 40) being capable of responding to instructions specifically addressed to the unit and also to instructions not specifically addressed.**"

VIII. The Appellant argued in the oral proceedings that the subject-matter of claim 1 of the main request was novel over D07, since D07 did not mention response signals only being transmitted on demand.

As to the auxiliary request, the Appellant argued that the term "respond" used towards the end of the characterising part of claim 1 was more general than merely transmitting a response to an instruction. It also covered reacting to a received instruction. Moreover D01 did not disclose non-specific addressing of information units, since several information units could merely be set up with the same address. Also D01 only described putting transceivers into a high-gain mode, there being no disclosure of an instruction.

IX. At the end of the oral proceedings the Board announced its decision.

### **Reasons for the Decision**

1. *Admissibility*

The appeal complies with the requirements mentioned in Rule 65(1) EPC and is therefore admissible.

2. *Amendments*

Claim 1 of the main request results from the combination of claim 1 as granted with features taken from the patent description (column 4, lines 36 to 40, corresponding to page 4, lines 15 to 18 of the application documents as filed). Claim 1 of the auxiliary request results from the combination of granted claims 1 and 3.

The Board is consequently satisfied that claim 1 according to both requests satisfies the requirements of Article 123(2) and (3) EPC.

3. *The main request*

The Board regards D07 as forming the closest prior art. D07 concerns an information system comprising a master station and electronic price display modules which are battery powered (column 18, lines 57 to 61) and can confirm safe receipt of data signals from a master station (Figures 7a to 7e and associated text, in particular column 13, lines 18 to 24) to overcome the effects of the noisy RF (radio frequency) environment. The Board regards such a data signal and such a confirmation signal as being a "special interrogation signal" and a "verification signal" in the sense of claim 1, the patent giving no indication of what is meant by "special". Some instructions from the base station do not however require a response (column 13, lines 15 to 18). In other words, response signals are transmitted by the display modules on demand only. Since the display modules do not have to respond to each and every command signal received from the master station, it is implicit that the power consumption of the display units is reduced, thus increasing their battery life.

The Appellant has argued that the fact that a display module does or does not respond to an instruction may be due to the fact that it has information on whether or not it should respond, rather than responding in accordance with an instruction from the master station. In the Board's view such a scenario would also fall within the definition contained in claim 1 that the verification signal is emitted from the individual display unit only upon demand from the master station, since by using the appropriate instruction the master station can influence whether or not the display unit



responds.

Hence the subject-matter of claim 1 differs from the disclosure of D07 only in the use of infrared rather than RF communications between the master station and the display modules.

During the oral proceedings the Appellant argued that the skilled person would not look to the prior art in the field of infrared communications to find solutions to problems in the RF field.

In point 2.6 of its decision the Opposition Division held that infrared and RF communications systems were common alternatives. The Board sees no reason to differ from this view. D07 mentions the problem of the very noisy RF environment; see column 11, lines 45 to 46. It was known at the priority date - see, for example, D02 (column 3, lines 33 to 36) - that infrared communications overcame the susceptibility to interference, as well as the licensing requirements of RF communications. The Board is consequently unable to see an invention in the modification of the system known from D07 to use infrared communications to overcome these problems.

Hence the Board finds that the subject-matter of claim 1 lacks inventive step, Articles 52(1) and 56 EPC.

4. *The auxiliary request*

The Board regards D03 as forming the closest prior art. D03 concerns an information display system comprising a master station communicating using several infrared

transmitters with a plurality of information display units; see page 6, lines 9 to 13. The display units are so arranged as to normally respond to instructions or messages specifically addressed to the unit; see, for example, page 8, last paragraph. To test which transmitter is within range of a particular display unit a test signal is transmitted to a display unit which responds with a confirmation signal if the test signal is received (page 3, lines 25 to 29). According to page 6, lines 14 to 16, the power needed to operate the display module is delivered from an internal rechargeable battery connected to an array of solar cells. The battery is charged using daylight or the store lighting, the display being turned off to conserve power at night when the supermarket lights are off (page 6, lines 24 to 25).

The Appellant has disputed whether, interpreting the claims in the light of the description, Article 69(1) EPC, in particular column 2, lines 48 to 58 and column 4, lines 30 to 51, the "test signal" can be fairly regarded as a "special interrogation signal" and the "confirmation signal" as a "verification signal", since D03 concerns a test to see whether the display modules are within range whilst in the patent communication occurs. In the Board's view the verification of the correct functioning of the individual display units mentioned in the patent (column 4, lines 31 to 32) amounts to the same thing technically as testing to see whether a display unit will respond to a test signal. The Board is consequently unable to discern a technical justification for this distinction between the "test" and "confirmation" signals in D03 and the "special interrogation" and "verification" signals specified in

the patent claims.

The subject-matter of claim 1 consequently differs from the disclosure of D03 in the information unit being capable of responding to instructions not specifically addressed to it.

The skilled person starting from D03 would realize the paramount importance of conserving battery power, especially if the time available for recharging the battery of the display unit is reduced by turning off the supermarket lights. D01 (in particular page 11, lines 8 to 22) shows that it was known at the priority date to solve this problem by addressing the display units in groups to switch them between a "low gain" and a "high gain" mode, the Board being unable to discern any technical difference, as argued by the Appellant (see point VIII above), between such switching and compliance with an instruction to switch. Consequently such "group addressing" results in the display units responding to instructions not specifically addressed to them. Hence, by applying the teaching of D01 to the disclosure of D03, the skilled person would arrive at the subject-matter of claim 1 without inventive skill.

The Board concludes that the subject-matter of claim 1 also lacks inventive step, Articles 52(1) and 56 EPC.

5. *The Opposition procedure*

The Appellant has disputed, relying on G 1/95 (OJ EPO 1996, 615), whether the Opposition Division was entitled to allow the inventive step of the subject-matter of the independent claims to be discussed for the first time in the oral proceedings, since up until

that point the Opponent had only provided argumentation as to why these claims lacked novelty.

The Opposition Division concluded (see point 2.6 of the minutes of the oral proceedings and point 2.5 of the decision) that the ground of inventive step could be considered for all claims, since, amongst other reasons, the patent as a whole had been opposed on the basis of lack of inventive step and the Opponent had naturally not disputed the inventive step of the claims alleged to lack novelty.

The Board is not convinced by the Appellant's arguments relying on G 1/95. The ground of inventive step had already been raised in the statement of opposition and thus did not constitute a "fresh ground of opposition" in the sense of G 1/95 when it was cited against all instead of only some of the claims. Moreover G 1/95 relates to the introduction of new grounds of opposition into appeal proceedings (see headnote) and is thus not directly relevant to the opposition proceedings in question. It does however refer (reasons, point 5.2) to G 10/91 (OJ EPO 1993, 408 and 420).

According to G 10/91, whilst an Opposition Division is not obliged to consider all grounds for opposition under Article 100 EPC going beyond the statement under Rule 55(c) EPC, it has a discretion to consider other grounds for opposition which, prima facie, prejudice maintenance of the patent. Hence in the light of G 10/91 the Opposition Division was competent to consider the inventive step of the granted independent claims. Furthermore the Patentee cannot reasonably claim to have been surprised by such a development,

given the fact that an explicit objection under Article 56 EPC was raised against claim 1 as granted well before the oral proceedings called by the first instance (see the Opponent's letter of 24 September 1998 and the communication accompanying the summons to oral proceedings).

The Board is consequently satisfied that the Opposition Division exercised its discretionary power according to Article 114(1) EPC reasonably in allowing the inventive step of all claims to be discussed at the oral proceedings.

## **Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

M. Kiehl

S. V. Steinbrener