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**Datasheet for the decision
of 27 October 2006**

Case Number: T 1170/05 - 3.5.02

Application Number: 97303069.5

Publication Number: 0806746

IPC: G07B 17/02

Language of the proceedings: EN

Title of invention:

Postage meter

Applicant:

NEOPOST LIMITED

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 54

EPC Rule 70(1)

Keyword:

"Legal validity of a decision not bearing the signature of
deceased examiner"

"Novelty - no"

Decisions cited:

T 0390/86, T 0243/87, T 0999/93

Catchword:

-



Case Number: T 1170/05 - 3.5.02

D E C I S I O N
of the Technical Board of Appeal 3.5.02
of 27 October 2006

Appellant: NEOPOST LIMITED
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 23 March 2005
refusing European application No. 97303069.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: W. J. L. Wheeler
Members: M. Rognoni
E. Lachacinski

Summary of Facts and Submissions

- I. The appellant (applicant) appealed against the decision of the examining division refusing European application No. 97 303 069.5.
- II. In the oral proceedings held on 21 January 2005, the examining division was composed of three technically qualified members. After deliberation the chairman announced that the present application was refused. Unfortunately, the second examiner and minute writer died on 8 February 2005, *i.e.* before the decision had been written. A copy of the minutes of the oral proceedings and of the examining division's decision bearing the names of the three members of the examining division was sent to the applicant on 23 March 2005. As evident from the file, the second examiner was unable to sign the minutes of the oral proceedings, as minute writer, and the decision of the examining division (EPO internal form 2048).

On 15 March 2005, after ticking the box "I agree with the application being refused" and signing the decision on behalf of the second examiner on the form 2048, the chairman of the examining division added the following handwritten note:

"Mr Butler [*second examiner*] deceased after the present decision had been announced at the end of the oral proceedings held on 21.05.2005, but before the grounds of the decision had been put in writing. The attached grounds reflect those which were discussed during the deliberation - in which Mr Butler took part - having led to the present decision. As a consequence, the

present decision and the underlying grounds have been signed by the chairman also on Mr Butler's behalf."

III. In the contested decision, the examining division found, *inter alia*, that the subject-matter of Claim 1 did not involve an inventive step with respect to the following document:

D1: US-A-4 622 651.

IV. In a communication dated 21 November 2005, the Board expressed the view that, in the unfortunate circumstances of the present case, the examining division appeared to have acted correctly and in accordance with the case law of the boards of appeal. Thus, the Board was inclined to consider the decision under appeal as being legally valid.

V. With a letter dated 31 January 2006, the appellant expressed his disagreement with respect to the legal validity of a decision which bore only the signatures of two of the three members of the examining division.

VI. In a communication summoning the appellant to oral proceedings and dated 3 May 2006, the Board reaffirmed its opinion about the legal validity of the contested decision and expressed its preliminary view that the subject-matter of claims 1 and 4 appeared to lack novelty over D1 (Article 54 EPC).

VII. With a letter faxed on 26 October 2006 the appellant's representative informed the Board that the applicant would not be attending the oral proceedings as

scheduled for 27 October 2006, and requested that a decision be based on the written submissions.

VIII. Oral proceedings were held on 27 October 2006 in the absence of the appellant.

IX. In the notice of appeal, the appellant had requested that a patent be granted on the basis of the documents on file, *i.e.* on the basis of claims 1 to 4 filed with letter of 22 October 2002 and annexed to the contested decision.

X. Claim 1 according to the appellant's request reads as follows:

"A postage meter, including:
printing means (19, 20) for printing franking impressions on mail items;
accounting means (10) for performing accounting and control functions in respect of franking operations in which franking impressions are printed on mail items;
a first ascending register (30) for storing an accumulated total value of credit; and
a second ascending register (31) for storing an accumulated total value of postage charges dispensed by the postage meter in franking mail items;
characterised in that the accounting means (10) is responsive to an input of a required postage value to be applied to a mail item, the accumulated total value of credit stored in the first ascending register (30) and the accumulated total value of dispensed postage charges stored in the second ascending register (31) to determine if the accumulated total value of credit stored in the first ascending register (30) is at least

equal to a sum of the required postage value and the accumulated total value of dispensed postage charges stored in the second ascending register (31), and, in response to determination of the accumulated total value of credit stored in the first ascending register (30) being at least equal to the sum of the required postage value and the accumulated total value of dispensed postage charges stored in the second ascending register (31), being operative to operate the printing means (19, 20) to print a franking impression corresponding to the required postage value on the mail item and increment the accumulated total value of dispensed postage charges stored in the second ascending register (31) by an amount equal to the required postage value."

Claim 4 reads as follows:

"A method of operating a postage meter, comprising the steps of:

storing an accumulated total value of credit entered into the postage meter; and

storing an accumulated total value of postage charges dispensed by the postage meter;

characterised in that the method further comprises the steps of:

determining if the accumulated total value of credit is at least equal to a sum of a required postage value to be applied to a mail item and the accumulated total value of dispensed postage charges; and

in response to determination that the accumulated total value of credit is at least equal to the sum of the required postage value and the accumulated total value of dispensed postage charges, operating printing means

(19, 20) to print a franking impression corresponding to the required postage value on the mail item and incrementing the accumulated total value of dispensed postage charges by an amount equal to the required postage value."

XI. The appellant put forward the following arguments against the legal validity of the contested decision:

Decision T 0999/93 clearly stated (reasons: point 3, lines 16 and 17) that for a decision to be valid it had to bear the signatures of all the members appointed to make the decision. Also, T 0390/86 stated that it had to be clear from the decision that the reasons of the decision were those of the appointed members. In the present case, where the minute writer had not prepared the minutes, it was not seen how the minutes could possibly properly reflect the proceedings. The minutes had presumably been written by another of the members based on an *ex post facto* recollection of the proceedings, and yet the decision still showed the deceased member as the minute writer.

As to the objection of lack of novelty raised by the Board in the communication dated 3 May 2006, no submissions were made by the appellant.

Reasons for the Decision

1. The appeal is admissible.

Legal validity of the contested decision

- 2.1 The first issue to be considered in the present appeal is whether the decision of the first instance, which bears the signatures of only two of the three members of the division, is to be regarded as legally valid.
- 2.2 Rule 70(1) EPC states that any decision, communication and notice from the EPO is to be signed by and to state the name of the employee responsible. In view of the possibility that not all the appointed members of a division of first instance might be able to sign a decision (for example because of illness), the board in T 0390/86 (OJ 1989, 30) (see point 7. of the reasons) held that: *"if a decision of a particular Division is to be legally valid, it must have been written on behalf of and represent the views of the members who were appointed to that Division to decide the issue(s) the subject of the decision, and it must bear signatures which indicate this."* The same conclusion is drawn in T 0999/93 (not published) (point 3.), which also refers to point 7. of T 0390/86.
- 2.3 Considering in particular the course of action to be taken when a member of a first instance division is incapacitated, for instance because of illness, and also referring to T 0390/86 (point 7. of the reasons), the board in T 0243/87 (not published) (point 4. of the reasons) held that in such exceptional circumstance it was expedient to accept that the decision should be

signed by the other appointed members also on behalf of the incapacitated member of the division. However, care should be taken that the reasons given in the written decision reflected the opinion of all the members who had taken part in the oral proceedings.

2.4 In the present case, the written decision of the examining division (Form 2048 dated 15 March 2005) bears the signatures of the first examiner and of the chairman, who also signed on behalf of the deceased second examiner. Furthermore, in a handwritten and signed note, the chairman explicitly declared that the written grounds reflected those which had been discussed during the deliberation of the examining division, and which had led to the decision announced at the end of the oral proceedings. Thus, the course of action taken by the examining division in the unfortunate circumstance of the present case complies with the case law of the boards of appeal and, in particular, with T 0243/87.

2.5 As there is no reason to question the content of the chairman's handwritten declaration or to suspect that the minutes of the oral proceedings were not based on a draft made by the second examiner, the Board assumes that the written grounds for refusing the present application indeed reflect the deliberation of the examining division at the end of the oral proceedings, and that, in accordance with the cited case law of the boards of appeal, the contested decision is to be regarded as legally valid.

It is further noted that the conclusion reached in the present case as to the legal validity of a decision

signed only by two of the three appointed members is also consistent with Article 7(3) of the Rules of Procedure of the Boards of Appeal which specifies that if, when a Board has already reached a final decision, a member is unable to act, he shall not be replaced by an alternate.

Novelty

Claim 1

3.1 Document D1 relates to a postage meter including, *inter alia*, printing means for printing franking impressions on mail items and a memory "*employed to retain critical accounting information when power is removed from the meter*" (D1, column 4, lines 62 to 64). As specified in D1 (column 4, line 64 to column 5, line 20) the non-volatile memory 76 (see Figure 2b) may include a descending register, which stores the amount of postage available for printing franking impressions, an ascending register, which continually increments and registers the total amount of postage printed by the meter, and an accounting register, which is used as a control sum register and thus stores the sum of the values of the descending and ascending registers. The value of the accounting register increases when postage value is added to the descending register, but remains constant when the printing of postage increases the ascending register and decreases the descending register.

The postage meter according to D1 (see column 2, lines 38 to 43) further comprises "*electronic accounting circuits coupled to the printing mechanism for*

accounting for postage printed by the printing mechanism". As specified in column 2, lines 46 to 48, the "electronic accounting circuits include a microcomputer which controls the operation of the value selection circuit". As postage is printed, the amount of postage available is subtracted from the amount stored in the descending register (D1, column 5, lines 2 to 4).

In other words, the descending register of the non-volatile memory 76 and the microprocessor 84, which controls all functions of the postage meter on the basis of the information stored in the various registers (see Figures 2a and 2b), constitute accounting means for performing accounting and control functions in respect of franking operations in which franking impressions are printed on mail items.

3.2 The postage meter known from document D1 thus comprises the following features recited in the preamble claim 1 of the appellant's request:

- printing means for printing franking impressions on mail items (see D1, column 2, lines 39 to 43),
- a first ascending register ("accounting register") to store an accumulated total value of credit,
- a second ascending register to store an accumulated value of postage charge dispensed by the postage meter in franking mail items, and
- accounting means for performing accounting and control functions in respect of franking

operations in which franking impressions are printed on mail items.

3.3 The characterising part of claim 1 specifies the "accounting means" of the claimed postage meter as follows (emphasis added):

(a) it is "responsive to an input of a required postage value to be applied to a mail item, the accumulated total value of credit stored in the first ascending register (30) and the accumulated total value of dispensed postage charges stored in the second ascending register (31)",

(b) "to determine if the accumulated total value of credit stored in the first ascending register (30) is at least equal to a sum of the required postage value and the accumulated total value of dispensed postage charges stored in the second ascending register (31), and",

(c) "in response to determination of the accumulated total value of credit stored in the first ascending register (30) being at least equal to the sum of the required postage value and the accumulated total value of dispensed postage charges stored in the second ascending register (31)", it is operative "to operate the printing means (19, 29) to print a franking impression corresponding to the required postage value on the mail item and increment the accumulated total value of dispensed postage charges stored in the second ascending register (31) by an amount equal to the required postage value".

3.4 According to the description of the published application (column 2, lines 21 to 25 and column 4, lines 16 to 23) the accounting means 10 is a microprocessor which carries out a routine for determining whether the sum of the required postage charge and of the accumulated total value of postage charges (stored in the second ascending register) is equal to or less than the accumulated total value of credit in the first ascending register.

3.5 Feature (b) of claim 1, however, is not limited to the procedure for verifying the availability of sufficient funds set out in the description. It may be construed as relating to a generic way of determining whether sufficient funds are available for printing a required postage value.

This interpretation of feature (b) of claim 1 is supported by claims 2 and 3, both dependent on claim 1, which specify two possible alternative routines for verifying the condition of availability of sufficient funds for printing a required postage value.

According to claim 2, the accounting means is *"operative to compare the sum of the required postage value and the accumulated total value of dispensed postage charges stored in the second ascending register (31) with the accumulated total value of credit stored in the first ascending register (30)"*, in order to verify the condition expressed in feature (b) of claim 1 (see 3.3 above).

According to claim 3, the accounting means is operative *"to perform a calculation in respect of the sum of the*

required postage value and the accumulated total value of dispensed postage charges stored in the second ascending register (31) and the accumulated total value of credit stored in the first ascending register (30)" in order to determine if the condition according to feature (b) is verified. In principle, such an unspecified "*calculation*" could also involve taking the difference between the total value of credit and the total value of dispensed postage charges (including the required postage value), and verifying if such difference is at least zero.

3.6 Thus, the Board is convinced that, in the context of claim 1 of the present application, determining if the accumulated total value of credit stored in the first ascending register is at least equal to a sum of the required postage value and the accumulated total value of dispensed postage charges stored in the second ascending register simply means verifying if the remaining value of credit is at least equal to the required postage value.

3.7 In the postage meter of D1 (column 6, lines 34 to 65), the microprocessor 84 communicates with the different registers (memory 76) via address, data and control buses (see Figures 2a and 2b) and is necessarily "*responsive*" to the data stored in these registers and responsible for their update when a franking impression is printed or new credit value is added (cf. feature (a) above).

As the accounting means of the known postage meter comprises a descending register whose content represents the difference between the contents of the

first and second ascending registers, it is responsive to these registers in the sense that its content varies every time the content of the first ascending register or of the second ascending register is changed.

As to the criterion applied by the accounting circuits for enabling the printing of postage (see D1, column 2, lines 39 to 43), it is implicit that a franking impression is usually printed only if sufficient funds are available. Insofar as the accounting means of D1 and in particular the descending register are responsible for verifying the availability of sufficient funds, they also involve feature (b), specified above.

Furthermore, the presence in the postage meter according to D1 of accounting means including a descending register which stores the remaining postage value (*i.e.* the difference between total value of available funds and the total value of dispensed funds) implies that the known postage meter could verify the availability of sufficient funds either by comparing the content of the descending register with the value to be printed or by checking whether the difference between the content of the descending register and the required postage charge is at least zero. In both cases, the determination of a condition of sufficient funds performed by the known postage meter would involve the required postage value and the remaining credit (*i.e.* the difference between the total value of credit and the total value of dispensed postage charges), and thus it could be regarded as the result of a "*calculation*" performed by the accounting means on these three parameters, as indicated in dependent claim 3 of the appellant's request.

As to the last feature of the characterising part of claim 1 (see feature (c) above), D1 (column 5, lines 11 and 12) specifies that the second register continually increments and registers the total amount of postage printed by meter, *i.e.* when the condition of availability of sufficient funds set out in feature (b) is fulfilled.

3.8 In summary, the Board considers that the postage meter known from D1 comprises all the features recited in claim 1 of the appellant's request.

Claim 4

4.1 Claim 4 relates to a method of operating a postage meter comprising the steps of storing an accumulated total value of credit entered into the postage meter and storing an accumulated total value of postage charges dispensed by the postage meter. These two steps are known from the postage meter according to D1. The third step specified in the characterising portion of the claim consists in determining whether the sum of the required postage value to be applied to a mail item and the accumulated value of the postage charge dispensed by the postage meter is equal to or less than the accumulated total value of credit. As pointed out above, this condition in fact indicates that there is sufficient credit available to the user and is not linked to any particular procedure to be carried out for its verification.

In other words, the characterising part of claim 4 merely requires that a certain condition be met (availability of sufficient funds) without specifying

the actual method steps involved in the verification (adding the required postage value to the accumulated total value of dispensed charges and comparing this sum with the accumulated value of total credit).

- 4.2 As the accounting means referred to in document D1 necessarily verify the same condition (*i.e.* that sufficient funds are available) before enabling the printing of a franking impression, the method of operating a postage meter according to claim 4 is based only on steps which are either explicitly or implicitly disclosed in D1.
5. In the result, the Board finds that the subject-matter of both claims 1 and 4 of the appellant's request is not new within the meaning of Article 54 EPC, and that, consequently, the present application has to be refused.

Order

For the above reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

U. Bultmann

W. J. L. Wheeler