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**Datasheet for the decision  
of 16 July 2013**

**Case Number:** T 1560/09 - 3.5.02

**Application Number:** 07110976.3

**Publication Number:** 1862981

**IPC:** G08B 13/24

**Language of the proceedings:** EN

**Title of invention:**

Applications for radio frequency identification systems

**Applicant:**

3M Innovative Properties Company

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 76(1), 123(2)

**Keyword:**

"Added subject-matter (main request) - no"

"Remittal to first instance - yes"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1560/09 - 3.5.02

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.02  
of 16 July 2013

**Appellant:** 3M Innovative Properties Company  
(Applicant) 3M Center  
P.O. Box 33427  
St. Paul  
MM 55133-3427 (US)

**Representative:** Vossius & Partner  
Siebertstrasse 4  
D-81675 München (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 25 February  
2009 refusing European patent application  
No. 07110976.3 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** M. Ruggiu  
**Members:** R. Lord  
P. Mühlens

## Summary of Facts and Submissions

I. This is an appeal of the applicant against the decision of the examining division to refuse European patent application No. 07 110 976.3. The application was filed as a divisional application of the international application published as WO 00/10144 A1, referred to in the following as the parent application. The reason given for the refusal was that the application did not meet the requirements of Article 76(1) EPC.

II. Oral proceedings before the board took place on 16 July 2013. The appellant requested that the decision under appeal be set aside and that the case be remitted to the department of first instance for further prosecution on the basis of claims 1 and 2 of the request filed with letter dated 6 July 2009 (main request) or on the basis of claims 1 and 2 of the auxiliary request filed with letter dated 14 June 2013.

III. Claim 1 of the appellant's main request reads as follows:

"A method of processing multiple items each having an RFID element, comprising the steps of:

- (a) presenting more than one of said items to a hand-held RFID reader;
- (b) obtaining identification information from the RFID elements approximately simultaneously; and
- (c) using the identification information obtained from the RFID elements to determine whether different types of items are among the items presented."

Claim 2 is dependent on claim 1.

IV. The appellant essentially argued as follows:

The description in the parent application relating to hand-held RFID readers (e.g. that of page 22, lines 2 to 14) made clear that this teaching applied also to the embodiments using non-portable RFID readers.

The skilled person would have understood that the term "identification information" covered not just information enabling the item to be individually identified, but also information identifying only the item type, so that the disclosure of page 20, lines 5 to 21 provided a basis for the amendments in claim 1 of the main request with respect to claim 18 of the parent application as filed.

The same understanding of the meaning of this expression would have led the skilled person to consider the teaching of section II, C of the description to be relevant to claims 18 and 26 of the parent application, particularly that of page 22, lines 5 and 6, and page 24, lines 4 and 5 relating to identifying multiple items, and that of page 25, lines 29 to 31 and page 26, lines 13 to 24 concerning different item types. The combination of this teaching also provided a basis for claim 1 of the main request.

## Reasons for the Decision

1. The appeal is admissible.
  
2. *Added subject-matter compared to parent application as originally filed (Article 76(1) EPC)*
  - 2.1 The board agrees with the appellant that the description of the application of which the present application is a divisional application (i.e. the parent application) discloses clearly that the teaching relating to hand-held RFID devices is also applicable to the embodiments described using non-portable devices, this being clear in particular from page 22, lines 2 to 14 (of the published international application WO 00/10144 A1). Thus the board sees no objection under Article 76(1) EPC to the introduction into claim 18 of the parent application (which forms the basis for claim 1 of the present main request) of the definition that the RFID reader is hand-held.
  
  - 2.2 The board considers that the expression "identification information" in claim 1 of the appellant's main request must be interpreted as meaning information which enables the item to be fully identified. The board is of the opinion that this interpretation represents the natural interpretation of this expression, and that a broader interpretation would be applicable only if the expression were qualified (e.g. by an indication that it relates to item type only), and that this interpretation is particularly clear in the context of a method relating to RFID elements, given that it is a standard property of an RFID element that it includes a unique identification number. Moreover, the board notes

that this interpretation is confirmed by the description of the parent application, in particular page 11, lines 11 to 23 and page 17, lines 5 to 16, in both of which an explicit distinction is made between, on the one hand, identification information ("library identification number" on page 11, "item identification information" on page 17) and, on the other hand, type information ("media type code" on page 11, "designation of media type" on page 17). The board therefore does not agree with the appellant's argument that the expression "identification information" is sufficiently broad in meaning to cover information such as media type, book category (e.g. adult fiction or juvenile fiction, as described on page 26, lines 13 to 24), or items belonging to different libraries (as described at page 25, lines 29 to 31), so that these passages cannot provide a basis for the amendment of the claim.

- 2.3 However, the board also concludes that this interpretation of the wording of the claim would suggest to the skilled person that the teaching of page 18, lines 12 to 31 is relevant to the embodiment described at page 20, lines 14 to 24. The latter paragraph is clearly the sole embodiment of the description which falls within the terms of claim 1 of the main request, since it is the only one which involves both simultaneous reading of multiple RFID elements and determining whether different types of element are present. On this basis the board is of the opinion that a skilled person, reading the general description of the determination of the "kind" of material on page 20, would recognise that the detailed method for determining media type on page 18 could be used. Moreover, the board considers that the skilled

person would recognise from the description on page 18 that the principle of the method is to use the identification information to determine the media type, but that the specific use of the LAV software is not significant. The board therefore concludes that the skilled person reading these two sections of the parent application would understand them as providing a basis for the amendment of claim 18 (of the parent application) to define that identification information is obtained from the RFID elements and that this identification information is used to determine whether different types of item are present.

2.4 Since the amendments discussed above are the only amendments other than renumbering in the present claims with respect to claims 18 and 19 of the parent application as originally filed, the board concludes that the claims of the appellant's main request do not contravene Article 76(1) EPC.

3. *Added subject-matter compared to divisional application as originally filed (Article 123(2) EPC)*

Given the interpretation of the expression "identification information" discussed in paragraph 2.2 above, the board concludes that there is no difference in substance between claim 1 of the present main request and claim 1 of the present divisional application as originally filed. Specifically, given this interpretation, the board is of the opinion that the additional wording "to individually identify the RFID elements" has no further limiting effect on the subject-matter of the claim. Given this conclusion, the deletion of this wording cannot give rise to any

objection of added subject-matter. Since the only other amendment in the claims of the present main request with respect to those of the divisional application as originally filed is the correction of the word "times" to "items" in each claim, the board concludes that they also do not contravene Article 123(2) EPC.

4. *Further prosecution*

Since the issues of novelty and inventive step were not discussed in detail in the procedure before the examining division, the board considers it to be appropriate to follow the appellant's request to remit the case to the department of first instance for further prosecution on the basis of the claims of the main request. It is therefore not necessary for the board to consider the appellant's auxiliary request.



**Order**

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

1. The decision under appeal is set aside.
  
2. The case is remitted to the department of first instance for further prosecution on the basis of claims 1 and 2 of the request filed with letter dated 6 July 2009.

The Registrar:

The Chairman:

U. Bultmann

M. Ruggiu