

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 18 February 2016**

**Case Number:** T 2227/11 - 3.4.03

**Application Number:** 05714466.9

**Publication Number:** 1716531

**IPC:** G01V15/00, A61B5/117, A61M1/02,  
G01N33/48, G06F17/40,  
G06F19/00, G08B21/00, G06K9/62

**Language of the proceedings:** EN

**Title of invention:**  
APPARATUS AND METHODS FOR MONITORING TRANSFUSION OF BLOOD

**Applicant:**  
Neoteric Technology Limited

**Headword:**

**Relevant legal provisions:**  
EPC 1973 Art. 54(1), 54(2), 56

**Keyword:**  
Internet citation - standard of proof  
Inventive step (no)

**Decisions cited:**  
T 1134/06

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

European Patent  
Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89  
2399-4465

Case Number: T 2227/11 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 18 February 2016**

**Appellant:** Neoteric Technology Limited  
(Applicant) 205-1099 West 8th Avenue  
Vancouver, British Columbia V6H 1C3 (CA)

**Representative:** Grünecker Patent- und Rechtsanwälte  
PartG mbB  
Leopoldstraße 4  
80802 München (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 28 July 2011  
refusing European patent application No.  
05714466.9 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** G. Eliasson  
**Members:** R. Bekkering  
C. Heath

## Summary of Facts and Submissions

I. The appeal is against the refusal of application No. 05 714 466 for lack of novelty, Article 54(1) EPC (main request) over both documents:

D1: Haggas R: "*Are we transfusing the right patient?*",  
Internet citation  
Institute of Biomedical Science, IBMS Congress  
2001: The Transfusion Science Lecture, [Online]  
September 2001 (2001-09), pages 1-3,  
XP002431538, Birmingham, UK,  
Retrieved from the Internet:  
URL:[http://www.ibms.org/index.cfm?method=science.transfusion\\_science&subpage=transfusion\\_science\\_congress2001\\_lecture#](http://www.ibms.org/index.cfm?method=science.transfusion_science&subpage=transfusion_science_congress2001_lecture#)  
[retrieved on 2007-04-27]

D2: Anonymous: "*Blood Management*",  
Internet citation  
DATALOG INTERNATIONAL LTD., [Online] 5 June 2003  
(2003-06-05), pages 1-11, XP002431442,  
Retrieved from the Internet:  
URL:[http://web.archive.org/web/20030605063115/http://dataloguk.com/blood\\_management.htm](http://web.archive.org/web/20030605063115/http://dataloguk.com/blood_management.htm)  
[retrieved on 2007-04-26],

for lack of novelty, Article 54(1) EPC, over document D2 and lack of an inventive step, Article 56 EPC over document D1 (first auxiliary request), and

for lack of novelty, Article 54(1) EPC, over both documents D1 and D2 and for lack of an inventive step, Article 56 EPC over D1 and D2 (second auxiliary request).

Reference was also made to document

D1': [http://web.archive.org/web/20011121160424/  
http://www.ibmscongress.com/2001/27/transfusion\\_  
speech.php3](http://web.archive.org/web/20011121160424/http://www.ibmscongress.com/2001/27/transfusion_speech.php3)

providing a dated version from the Internet Archive of document D1 dated 21.11.2001.

- II. A first decision refusing the application dated 11 May 2011 was issued by the examining division and posted on the same day.

A notice of appeal against this decision was received on 19 July 2011. The appeal fee was also received on 19 July 2011.

With letter of 3 June 2011, the applicant requested correction of the decision and of the minutes of the oral proceedings.

A corrected second decision refusing the application dated 28 July 2011 was issued by the examining division and posted on the same day.

A second notice of appeal against this decision was received on 4 August 2011.

On 8 August 2011 the appeal fee was refunded.

A second appeal fee was received on 24 August 2011.

The statement setting out the grounds of appeal was received on 21 September 2011.

With letter of 13 September 2011, the applicant was informed that:

- "- *The decision to refuse a European Patent application dated 11.05.2011 has been cancelled.*
- *With regard to the communication of 24.08.2011 (Refund of fees), the fee for appeal paid for the decision dated 11.05.2011 has been refunded.*
- *The decision to refuse a European Patent application dated 28.07.2011 is valid.*
- *The time limits as mentioned on Form 2019 are calculated from the decision of 28.07.2011.*
- *This is to confirm that the notice of appeal has been filed in due time, namely on 04.08.2011.*
- *In addition the fee for appeal in amount of 1180,- EUR has been debited on 04.08.2011 too.*
- *The next procedural step is filing the grounds of appeal within four months of the notification of the decision of 28.07.2011."*

III. A summons to oral proceedings appointed for 18 February 2016 was issued by the board, provided with an annexed communication in which a provisional opinion of the board on the matter was given.

In particular, the appellant was informed that despite the fact that the examining division erroneously cancelled its first refusal decision and reissued a second corrected refusal decision, the relevant time limits for filing the notice of appeal, paying the appeal fee and filing the statement setting out the grounds of appeal were observed, so that the appeal was admissible.

Moreover, the appellant was informed that it appeared that the documents D1' and D2 were part of the state of the art under Article 54(2) EPC 1973.

Moreover, reference was made to document

D6: Turner C.L. et al., "*Barcode technology: its role in increasing the safety of blood transfusion*", *Transfusion*, Volume 43, September 2003, pages 1200-1209,

cited against a divisional application (EP 2 284 741 A) of the present application.

The subject-matter of claim 1 according to the main and the first and second auxiliary requests appeared to lack novelty or at least an inventive step over the cited documents.

IV. Reference is also made to the following document

D3: Ashford P et al.: "*Guidelines for blood bank computing*", *Transfusion Medicine*, Oxford, GB, vol. 10, no. 4, December 2000, pages 307-314, XP002339356,

V. At oral proceedings before the board, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the following application documents:

*Main request:*

Claims 1 to 5 filed as "*Main request*" with the statement setting out the grounds of appeal dated 21 September 2011;

*First auxiliary request:*

Claims 1 to 5 filed as "Auxiliary Request 1" with the statement setting out the grounds of appeal dated 21 September 2011;

*Second auxiliary request:*

Claims 1 to 5 filed as "Auxiliary Request 2" with the statement setting out the grounds of appeal dated 21 September 2011.

VI. Claim 1 according to the main request reads as follows:

*"A method for tracking blood transfusions, said method comprising the steps of:*

- (a) obtaining identification information for a patient and providing said patient with a wristband comprising an electronically readable indicia comprising said patient identification information;*
- (b) testing a a [sic] blood sample from said patient to determine the type of blood required by the patient*
- (c) allocating from a supply of blood units a blood transfusion unit for the patient, wherein said blood transfusion unit contains the type of blood required by said patient and wherein said blood transfusion unit is marked with an identifying code;*
- (d) labelling said allocated blood transfusion unit with a compatibility label, wherein said compatibility label comprises an electronically readable indicia comprising said patient identification information and said identifying code;*
- (e) generating a blood unit request slip for the patient, the blood unit request slip comprising an*



*electronically readable indicia comprising said patient identification information;*

*(f) retrieving the blood transfusion unit and verifying the blood transfusion unit's identity by comparing the patient identification information comprised within said electronically readable indicia on the blood unit request slip to the patient identification information comprised within the electronically readable indicia on the compatibility label on the patient allocated blood transfusion unit;*

*(g) comparing the patient identification information comprised within the electronically readable indicia on the patient's wristband to the patient identification information comprised within electronically readable indicia on the compatibility label on said patient allocated blood transfusion unit; and*

*(h) comparing the identifying code marked on the patient allocated blood unit with the identifying code comprised within the electronically readable indicia on the compatibility label on said patient allocated blood transfusion unit."*

VII. Claim 1 according to the first auxiliary request corresponds to claim 1 of the main request, with the following feature added at the end of the claim:

*"(i) providing means for a user to provide or record vital signs of the patient".*

VIII. Claim 1 according to the second auxiliary request corresponds to claim 1 of the main request, with step (e) reading as follows (amendments highlighted by the board):

*"(e) **reading the patient's wristband and** generating a blood unit request slip for the patient, the blood unit*

*request slip comprising an electronically readable indicia comprising said patient identification information **read from the wristband**".*

IX. The appellant submitted in substance the following arguments:

Documents D1 and D2 were not prior art under article 54(2) EPC. In decision T 1134/96 (read T 1134/06) it was explicitly stated that the fact that an Internet disclosure was state of the art under article 54(2) EPC should be proved beyond any reasonable doubt where facts and evidence had to meet the criteria established by the jurisprudence in respect of prior use, ie, they had to answer the questions when the Internet disclosure was made available to the public, what was made available and under which circumstances was it made available. Such evidence was not shown by the Examining Division. Moreover, with respect to D2 it had to be considered that in this decision it was explicitly stated that images of the Internet Archive (archive.org) were not necessarily instantaneous snapshots of a website, but might be assembled in the course of successive crawls and that links might connect to different material than at the time of capture. According to this decision, *"Where a disclosure has been retrieved from a resource such as the Internet Archive, further evidence concerning the history of the disclosure, whether and how it has been modified since the date it originally appeared on a web site will be necessary"*. No such further evidence was given by the Examining Division.

Moreover, neither D1 nor D2 disclosed the generation of a blood unit request slip for the patient that comprised patient identification information as claimed in step (e) of claim 1. Moreover, a comparison of the patient

identification information of the blood unit request slip to the patient identification information comprised on the compatibility label on the blood transfusion unit as provided for in step (f) of claim 1 was neither disclosed in D1 nor in D2.

Moreover, whereas D1 and D2 disclosed the employment of a compatibility label, it was not described in these prior art documents that this compatibility label comprised both patient identification information and the identifying code with which the blood transfusion unit was marked, as claimed in step (d) of claim 1. Moreover, D1 and D2 did not disclose the comparison of this information comprised in the compatibility label with the patient identification information stored in the patients wrist band and the identifying code marked on the blood unit, respectively, as claimed in steps (g) and (h) of claim 1 of the main request.

Therefore, the subject-matter of claim 1 of the main request was novel and involved an inventive step over both documents D1 and D2.

In claim 1 of Auxiliary Request 1, the additional step of providing means for a user to provide vital signs of the patient was included. Since this step was neither disclosed nor suggested in the recited prior art, inclusion of this feature even further distinguished the subject-matter claimed from the prior art.

Claim 1 of Auxiliary Request 2 was supplemented by the feature that the wristband comprising the electronically readable indicia comprising the patient ID information was read and that the blood unit request slip comprised the thus read indicia. This avoided faults caused by defective transfer of information on the patients ID

when generating some request document. Neither D1 nor D2 disclosed the generation of a request slip based on information read from information on the wristband of a patient.

## **Reasons for the Decision**

### *1. Admissibility of the appeal*

With letter of 13 September 2011, the applicant was *inter alia* informed that:  
the first decision refusing the application dated 11 May 2011 had been cancelled,  
the second decision refusing the application dated 28 July 2011 was valid, and  
the time limits as mentioned on Form 2019 (ie with respect to Article 108 EPC) were calculated from the second decision.

The findings in this letter are, however, incorrect as the first decision could only have been "*cancelled*" by the examining division by way of an interlocutory revision in accordance with Article 109(1) EPC 1973. However, according to the file no interlocutory revision was decided by the examining division (see also Case Law of the Boards of Appeal of the EPO, 7th edition 2013, III.K.4.1.4).

The second decision dated 28 July 2011 is, therefore, null and void.

Accordingly, contrary to what is stated in this letter, the date of notification of the decision for the purposes of Article 108 EPC remains that of the decision posted on 11 May 2011 and is accordingly 21 May 2011 (cf Rule 126(2) EPC).

However, as the first notice of appeal, the first appeal fee and the statement setting out the grounds of appeal were all received within the prescribed time limits as of 21 May 2011, the appeal is admissible.

2. *Internet citations*

The appellant disputed that D1 and D2 were prior art under article 54(2) EPC. According to T 1134/06, the fact that an internet disclosure was state of the art under article 54(2) EPC should be proved beyond any reasonable doubt. The facts and evidence had to meet the criteria established by the jurisprudence in respect of prior use, ie, they had to answer the questions when the internet disclosure was made available to the public, what was made available and under which circumstances was it made available. Such evidence was not shown by the examining division.

In the board's judgement, however, the examining division was right to comply with the practice followed at the EPO when citing documents retrieved from the Internet provided in the Notice of the EPO concerning internet citations (OJ EPO 8-9/2009, pages 456-462)) which is of a later date than decision T 1134/06 referred to by the appellant. It is noted that the examining division thereby also acted in accordance with

the instructions provided in the Guidelines for Examination in the EPO in force at that time (cf C-IV, 6.2; Version April 2010). In particular, the appropriate standard of proof for internet citations is the balance of probabilities.

The EPO standard of proof is generally the balance of probabilities. By way of exception, the standard of proof of the balance of probabilities is shifted to a standard of proof beyond reasonable doubt mainly in opposition where only one party has access to information eg concerning an alleged public prior use. The difficulty of the other party to gain access to information in support of no such public prior use having taken place, allowing it to counter-argue, has caused the case law to tend in this case toward expecting the public prior use to be proved beyond reasonable doubt (see also Case Law of the Boards of Appeal of the EPO, 7th edition 2013, I.C.2.5).

In the specific case of internet citations of prior art, both the EPO and the parties to the proceedings generally have equal access to the relevant information notably concerning the authenticity of its publication date and content. Accordingly, there is no reason to deviate from the standard of proof of the balance of probabilities.

Indeed, while the board agrees with the detailed reasoning in T 1134/06 that internet citations of prior art entail a number of difficulties in assessing the authenticity of notably the publication date and the content, in its judgement there is no reasons to impose a stricter standard of proof.

It is understood that these difficulties may require

some far-going investigations in the matter and the provision of supporting evidence. In the board's view, however, it is not because the matter is more complicated that a stricter standard of proof should be adopted.

The burden of proof generally lies with who affirms. In the specific case of internet citations of prior art cited by the EPO, the burden of proof thus lies with the EPO. If the EPO however is satisfied that, on the balance of probabilities, the internet citations constitutes prior art, it is then up to the party to prove otherwise.

3. *Documents D1, D1' and D2*

Having regard to the above, it is noted that D2 stems from Datalog International (previous name IBG Immucor), which appears to be the former name of the applicant, and that the Safe Track and IBG Immucor Blood Tracking System referred to in D1 are products of these companies. Accordingly, the applicant's access to information concerning these documents should be unproblematic.

In the decision under appeal, the examining division essentially held that document D1 was a presentation that took place at the IBMS Congress 2001 (September 2001) and that therefore the publication date was the date of the congress. Moreover, document D1', a copy of this report dated 21 November 2001 retrieved from the Internet Archive was provided.

Document D2 was retrieved from the Internet Archive and was dated 5 June 2003.

The examining division held that, on the balance of probabilities, both documents D1 and D2 were prior art under Article 54(2) EPC.

Concerning document D1, the appellant argued that the examining division failed to prove beyond any reasonable doubt that D1 was state of the art under Article 54(2) EPC.

As detailed above, however, a proof beyond any reasonable doubt is not required in the present case. A proof on the balance of probabilities suffices.

The content of documents D1 and D1' is identical, apart from an introductory paragraph not present in D1'. Rather than using document D1' as evidence that the publication date of document D1 lies before the priority date of the application, it is considered expedient to refer directly to document D1'.

The board has no reasons to doubt the authenticity of the content and publication date of document D1', so that the document is considered to form part of the state of the art under Article 54(2) EPC 1973.

Having regard to document D2, the appellant argued that in T 1134/06 it was explicitly stated that images of the Internet Archive (archive.org) were not necessarily instantaneous snapshots of a website but could be assembled in the course of successive crawls and that links could connect to different material than at the time of capture (paragraph bridging pages 6 and 7).

However, as is clear from the article referred to in T 1134/06, these successive crawls are completed in any case in two days (cf Howell B.A., "*Proving Web History*:"



*How to use the Internet Archive"*, Journal of Internet Law, February 2006, pages 3 to 9, in particular page 8, left-hand column, third paragraph). This point is thus irrelevant in the present case where the crawl dates of the different pages of D2 lie between February and June 2003 and thus several months before the priority date of the application (19 February 2004).

Moreover, the issue of links being inactive or connecting to different sites of the live web does not arise either in the present case, as each page of D2 has been individually crawled on the indicated dates (between 16.02.2011 and 24.06.2011) and archived.

Accordingly, the board has no reasons to doubt the authenticity of the content and publication date of document D2 either, so that also D2 is considered to form part of the state of the art under Article 54(2) EPC 1973.

#### 4. *Main request*

##### 4.1 *Amendments*

Claim 1 according to the appellant's main request corresponds to claim 1 as originally filed, with the step of collecting the blood sample omitted.

Claim 1 as amended is considered to comply with Article 123(2) EPC.

##### 4.2 *Novelty*

4.2.1 According to the decision under appeal, the subject-matter of claim 1 of the main request lacks novelty over both document D1 and D2.

The appellant argued that neither D1 nor D2 disclosed the generation of a blood unit request slip for the patient that comprised patient identification information as claimed in step (e) of claim 1 of the main request. Moreover, a comparison of the patient identification information of the blood unit request slip to the patient identification information comprised on the compatibility label on the blood transfusion unit as provided for in step (f) of claim 1 was neither disclosed in D1 nor in D2. In fact, step (f) of claim 1 was performed at the patient's bedside and added to the safety of the system. In document D2, on the other hand, the step of scanning the patient information from the request form was part of the Blood Track system and was performed remote from the patient's bedside at the blood storage location.

Moreover, whereas D1 and D2 disclosed the employment of a compatibility label, it was not described that this compatibility label comprised both patient identification information and the identifying code with which the blood transfusion unit was marked, as claimed in step (d) of claim 1. Moreover D1 and D2 did not disclose the comparison of this information comprised in the compatibility label with the patient identification information stored in the patients wrist band and the identifying code marked on the blood unit, respectively, as claimed in steps (g) and (h) of claim 1 of the main request.

#### 4.2.2 *Document D2*

Document D2 is a collection of web pages from a website of Datalog International.

- The first page provides an overview of the system.
- Page 2 provides an overview of a first part of the system named "Blood Track". Pages 3 and 4 relate to respective subsections of page 2.
- Page 5 provides an overview of a second part of the system named "Safe Track". Pages 6 to 8 relate to subsections of page 5.
- Page 9 provides an overview of a further part of the system named "AutoPPI" with pages 10 and 11 relating to subsections of page 9.

Incidentally, it is noted that the application as filed refers to both the Safe Track and Blood Track systems from DataLog International Ltd., [www.dataloguk.com](http://www.dataloguk.com) (cf description page 3, line 33 to page 4, line 22).

Document D2 discloses, in the terminology of claim 1, a method for tracking blood transfusions, the method comprising the steps of:

- (a) obtaining identification information for a patient and providing said patient with a wristband comprising an electronically readable indicia comprising said patient identification information (cf AutoPPI system, pages 9 to 11, in particular page 9, second section, "*How does it work*" and corresponding page 11);
- (b) testing a blood sample from said patient to determine the type of blood required by the patient (cf Safe Track system, pages 5 to 8, in particular page 7, first section, "*The Phlebotomy Module: Specimen Labels*");
- (c) allocating from a supply of blood units a blood transfusion unit for the patient, wherein said blood transfusion unit contains the type of blood required by said patient and wherein said blood

transfusion unit is marked with an identifying code (cf Blood Track system, pages 2 to 4, in particular page 4).

Moreover, document D2 discloses the step of:

- (d) labelling said allocated blood transfusion unit with a compatibility label, wherein said compatibility label comprises an electronically readable indicia comprising said patient identification information and said identifying code (cf page 5, second section; page 6, section "Safe Track Ensures that Patients Receive the Right Blood"; page 7, section "*The Transfusion Module: Right Blood for the Right Patient*").

In particular, according to D2 "*Using a hand-held device, Safe Track scans in the patient ID (on a wristband), the compatibility label, and the blood bag number on the blood units. By cross-matching these information, Safe Track checks for any discrepancy and warns the caregiver accordingly*" (cf page 5, *supra*). Moreover, "*Safe Track matches patient information, compatibility label, and blood bag number before starting the transfusion to ensure the blood unit is right for the patient. This is all done by a hand-held device at the patient's bedside*" (cf page 6, *supra*). Furthermore, according to D2 the following steps are performed:

- "2. Scan the patient ID. All patient details are captured from the wristband in one scan. Electronic transcription means no errors!
- 3. Scan the compatibility label on the blood bag.
- 4. Scan the donation number on the blood bag.
- 5. Safe Track will warn the caregiver for any discrepancies" (cf page 7, *supra*).

In the board's judgement the compatibility label in D2 needs to contain both the patient ID and the blood bag number in order to allow a cross-matching as disclosed in D2 of the patient ID scanned from the wristband, the information scanned from the compatibility label and the blood bag number scanned from the blood unit with the aim to ensure that the right blood is given to the right patient. A different possible set-up is not apparent, so that in the board's judgement it is implicit from document D2 that the compatibility label contains both the patient ID and the blood bag number.

The appellant argued in this respect that in the art the term "*compatibility*" did not refer to patient ID information, but rather incompatible red cell units, RhD mismatch, etc., as exemplified in document D3 (cf section 3.7.1). Moreover, in document D1', although essentially relating to the same system (Safetrack) as document D2, a compatibility label was provided which apparently contained an ISBT bar code for comparison rather than a blood unit identifying code. As the ISBT code was something fundamentally different, no conclusions could be drawn from D2 on what information exactly was provided on the compatibility label.

It is, however, noted that document D3 does not concern a compatibility label of the type at issue, suitable for electronic cross-matching with patient identification information and blood unit number, and is therefore irrelevant to the understanding of the compatibility label of document D2.

According to document D1', which indeed refers to the same Datalog Safe Track system, "*Once the laboratory procedures have been carried out and a unit is required*

for transfusion then the Transfusion module can be used. This module allows for the accurate matching and dispensing of units and allows for process auditing to occur. Once a unit is ready to be transfused, the user scans their own PDF ID and then the PDF ID of the patient. Then the PDF label on the Compatibility label on the unit is scanned and finally the ISBT bar code is scanned. The system then checks all the relevant data and determines if it all matches" (cf page 1, fifth and fourth paragraphs from the bottom). Contrary to the appellant's argument, the ISBT code is a unique donation code and corresponds to the identifying code on the blood transfusion unit as defined in claim 1. Accordingly, document D1' provides matching of the same information and in fact confirms the above understanding of the information provided on the compatibility label of D2.

Finally, reference is made to document D6, which also relates to the same Datalog Safe Track system, according to which the blood unit is provided with a compatibility label with a barcode containing both the patient ID and the blood unit number (cf page 1202, second bullet point).

Accordingly, the appellant's argument that the skilled person would generally understand the compatibility label of D2 not to include patient ID information is not persuasive.

Furthermore, it follows from the above that document D2 also discloses the steps of:

- (g) comparing the patient identification information comprised within the electronically readable indicia on the patient's wristband to the patient

identification information comprised within electronically readable indicia on the compatibility label on said patient allocated blood transfusion unit; and

- (h) comparing the identifying code marked on the patient allocated blood unit with the identifying code comprised within the electronically readable indicia on the compatibility label on said patient allocated blood transfusion unit.

Moreover, document D2 discloses the step of:

- (e) generating a blood unit request slip for the patient, the blood unit request slip comprising an electronically readable indicia comprising said patient identification information (cf page 2, second section; page 3, second section; page 4, point 5).

In particular, according to document D2 "*Blood Track records the identification of the user, the type of transport mode used (if applicable) and confirms the patient ID if required*" (cf page 2, *supra*), "*To further ensure the right unit is taken for the right patient, you can add an extra step in Blood Track to enter or scan the patient information from the request form*" (cf page 3, *supra*) and "*You can configure the system to request for patient information at this point, to confirm the blood unit is the correct one. Just scan the patient information from the request form and Blood Track will check it for you*" (cf page 4, *supra*). The request form specified in D2 is, thus, a blood unit request slip for the patient as defined in claim 1.

The appellant argued that the term "*patient information*" was not explained in D2. From D2, page 4 one merely

learned that patient information could be used to ensure the right unit was taken for the right patient. For this purpose, it was not necessary to have information on the patient ID (as stored on the wristband, cf D2, page 7) but rather on group characteristics (blood group etc., cf D2, page 2, last paragraph).

In the board's judgement, however, it is clear from D2 (cf page 2, *supra*) that the patient ID is confirmed, and that the reference to patient information on the request form (cf pages 3 and 4, *supra*) in fact refers to patient identification information.

Finally, regarding step (f) of claim 1, document D2 discloses retrieving the blood transfusion unit and confirming that the blood transfusion unit is the correct one by scanning the patient identification information comprised within said electronically readable indicia on the blood unit request slip (cf page 2, second section; page 3, second section; page 4, point 5).

The appellant argued that according to the application, this step was performed at the patient's bedside and added to the safety of the system, whereas in D2 the step of scanning the patient information from the request form was part of the Blood Track system and performed at the blood storage location.

The board notes, however, that claim 1 does not specify that the step is performed at the patient's bedside. In fact, according to the description of the application, the step of retrieving the blood transfusion unit, verifying the blood transfusion unit's identity and scanning the patient identification information comprised within the electronically readable indicia on



the blood unit request slip is done at the refrigerator where the blood transfusion units are stored, and thus remote from the patient's bedside, like in document D2 (cf application, page 12, line 9 to page 14, line 9; page 15, line 1 to page 16, line 2; figures 6, 7A, 7C).

Not disclosed in document D2 is, however, verifying the blood transfusion unit's identity by comparing the patient identification information comprised within said electronically readable indicia on the blood unit request slip to the patient identification information comprised within the electronically readable indicia on the compatibility label on the patient allocated blood transfusion unit.

Document D2 in fact merely discloses that after scanning the patient information, ie the patient identification information (see above), from the request form, the system will check that the blood unit is the correct one for the patient.

Accordingly, the subject-matter of claim 1 is new over document D2 in the sense of Article 54(1) EPC 1973.

4.2.3 The subject-matter of claim 1 is also new over the remaining cited documents.

#### 4.3 *Inventive step*

Document D2 is considered to provide the closest prior art. As discussed above, document D2 discloses that after scanning the patient identification information from the request form, the system checks that the blood unit is the correct one for the patient, but does not provide any detail on how this check is performed.

Accordingly, the objective problem to be solved relative to document D2 is to provide a suitable check step.

In accordance with D2 at the time of performing this check, the user has on the one hand retrieved a blood transfusion unit from the refrigerator and scanned the data thereon, and on the other hand scanned the patient identification information from the request form. Moreover, in accordance with D2 the blood unit is provided with a compatibility label, which contains the patient identification information as discussed above. In the board's judgement, it would be readily apparent to a person skilled in the art that a straightforward check to ensure the right unit is taken for the right patient would consist of comparing the scanned patient identification information from the request form with the patient identification information available from the compatibility label on the blood unit. In particular, it would be obvious to the skilled person to verify the blood transfusion unit's identity by comparing the patient identification information comprised within the electronically readable indicia on the blood unit request slip to the patient identification information comprised within the electronically readable indicia on the compatibility label on the patient allocated blood transfusion unit, as per claim 1, step (f).

Accordingly, the subject-matter of claim 1 according to the main request, having regard to the state of the art, is obvious to a person skilled in the art and, therefore, lacks an inventive step in the sense of Article 56 EPC 1973.

4.4 The appellant's main request is, therefore, not allowable.

5. *First auxiliary request*

5.1 *Amendments*

Claim 1 according to the first auxiliary request corresponds to claim 1 of the main request, with the additional feature of

"(i) *providing means for a user to provide or record vital signs of the patient*".

The additional feature is based on the original description (cf page 5, lines 4 to 13; page 20, line 34 to page 21, line 31; page 22, line 32 to page 23, line 13 and page 23, lines 27 to 37).

Accordingly, claim 1 as amended complies with Article 123(2) EPC.

5.2 *Inventive step*

According to document D2, Safe Track provides a printed report recording vital signs (temperature, pulse rate and blood pressure) before and after each transfusion episode (cf page 6, section titled "*Safe Track Provides an Audit Trail*"). Accordingly, it is already known from document D2 to provide means for a user to provide or record vital signs of the patient, as defined in feature (i).

As for the remaining features of claim 1, the same applies as for claim 1 according to the main request as laid down above.

Accordingly, the subject-matter of claim 1 according to the first auxiliary request also lacks an inventive step in the sense of Article 56 EPC 1973.

5.3 The appellant's first auxiliary request is, therefore, also not allowable.

## 6. *Second auxiliary request*

### 6.1 *Amendments*

Claim 1 according to the second auxiliary request, having regard to claim 1 of the main request, contains the additional feature of reading the patient's wristband and generating the blood unit request slip with the patient identification information read from the wristband.

The additional features are based on the description as originally filed (cf page 11, lines 13 to 35).

Accordingly, claim 1 as amended complies with Article 123(2) EPC.

### 6.2 *Inventive step*

Document D2 does not specify how the blood unit request form is generated and in particular, how the patient identification information is provided on the request form. The gist of D2 is, however, to avoid transcription errors and D2 therefore uses barcodes and scanners. In the board's view it would, thus, be obvious to the skilled person charged with the problem of generating the blood unit request form with the patient identification information on it, to scan the patient identification information. An error free and, thus,

obvious choice would be to scan it from the patient's wristband.

The appellant argued that document D2 completely failed to disclose any procedure for generating the request form. In D2, the patient identification information need not be scanned from the wristband but could be entered using a keyboard. Reading the patient's wristband and generating the blood unit request slip with the patient identification information read from the wristband avoided any discrepancies between the wristband and the request slip.

In the board's view, however, since D2 explicitly indicates that the Blood Track system "*[...] creates a complete audit of the movements of blood units in real time, without the need for manually recording transactions [...]*" and that "*the Blood Track computers are equipped with touch screen so you do not need keyboards or mouses to use Blood Track*", the skilled person is advised against using a keyboard (cf page 2, "*What can Blood Track do for me?*"; page 3, "*Blood Track is Easy to Use*"). Document D2 in fact uses scanning to enter data throughout to avoid errors.

Accordingly, the subject-matter of claim 1 according to the second auxiliary request, having regard to the state of the art, is also obvious to a person skilled in the art and, therefore, lacks an inventive step in the sense of Article 56 EPC 1973.

6.3 The appellant's second auxiliary request is, therefore, not allowable either.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated