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**Datasheet for the decision
of 21 March 2018**

Case Number: T 2465/13 - 3.2.07

Application Number: 08832869.5

Publication Number: 2206649

IPC: B65B1/30, A61J3/00

Language of the proceedings: EN

Title of invention:

SCATTERED MEDICINE SUPPLYING DEVICE, MEDICINE SCATTERING
METHOD, AND MEDICINE DIVIDING AND PACKING DEVICE

Applicant:

Yuyama Mfg. Co., Ltd.

Headword:

Relevant legal provisions:

EPC Art. 123(2), 84, 52, 56

Keyword:

Amendments - allowable (yes)
Claims - clarity (yes)
Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 2465/13 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 21 March 2018

Appellant: Yuyama Mfg. Co., Ltd.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 7 June 2013
refusing European patent application No.
08832869.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman V. Bevilacqua
Members: K. Poalas
C. Brandt

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision refusing European patent application No. 08 832 869.5.
- II. In its decision, the examining division held that claim 1 of the then main request filed with the submissions dated 7 December 2012 did not meet the requirements of Article 84 EPC, and that the subject-matter of said claim did not involve an inventive step over the disclosure of D8 (WO 2007/091375 A1) in combination with the general technical knowledge.
- III. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the sets of claims filed as main request with its statement dated 23 August 2017 and as auxiliary requests 1 and 2 with its statement setting out the grounds of appeal. Oral proceedings have been requested as an auxiliary measure.
- IV. The independent claims 1, 6 and 7 of the main request, upon which the present decision is based, read as follows:

Claim 1

"1. A distributed medicine supplying device (1) for sequentially supplying medicines accommodated in a plurality of measures (4) defined in a tray (5), comprising:
a receiving means (7) for receiving prescription data (12);
a storing means (8) for storing an assignment condition for a medicine accommodated in each of the measures (4)

of the tray (5);
a position determining means (13) for determining the measures (4) of the tray (5) to which the medicine is to be distributed in accordance with the assignment condition stored in the storing means (8) and based on the prescription data (12) received by the receiving means (7); and
a displaying means (9) for displaying a distribution position determined by the position determining means; characterised in that
the receiving means (7) is arranged to sequentially receive prescription data (12) associated with a plurality of prescriptions, each prescription being associated with a package number;
the assignment condition stored in the storing means (8) includes an assignment by a maximum package number having a condition of not exceeding a maximum package number that can be assigned to the tray (5), and
the position determining means (13) is configured to at least sequentially count the package numbers for prescriptions in the prescription data (12) sequentially received by the receiving means (7) and, while an accumulated value of the counted package numbers does not exceed the maximum package number based on the assignment by a maximum package number stored in the storing means (8) to determine the measures (4) of the tray (5) to which medicine associated with the prescriptions in the sequentially received prescription data is to be distributed."

"6. A distributed medicine supplying method for sequentially supplying medicines accommodated in a plurality of measures (4) defined in a tray (5), comprising:
receiving prescription data (12);
storing an assignment condition for a medicine

accommodated in each of the measures (4) of the tray (5);

determining a position of a medicine to be distributed to each of the measures of the tray according to the assignment condition and based on the received prescription data; and displaying a distribution position for the medicine;

characterised in that:

the prescription data is received sequentially and is associated with a plurality of prescriptions, each prescription being associated with a package number;

the assignment condition includes an assignment by a maximum package number having a condition of not exceeding a maximum package number that can be assigned to the tray (5), and

the method comprises sequentially counting the package numbers for prescriptions in the sequentially received prescription data (12) and, while an accumulated value of the counted package numbers does not exceed the maximum package number based on the assignment by a maximum package number stored in the storing means (8), determining the measures (4) of the tray (5) to which medicine associated with the prescriptions in the sequentially received prescription data is to be distributed in accordance with the assignment condition."

"7. A medicine packaging device (2) for sequentially supplying and packaging medicines accommodated in a plurality of measures (4) defined in a tray (5), comprising:

a receiving means (7) for receiving prescription data (12);

a storing means (4) for storing an assignment condition for a medicine to be accommodated in each of the measures (4) of the tray (5);

a position determining means (13) for determining the measures (4) of the tray (5) to which the medicine is to be distributed in accordance with the assignment condition stored in the storing means (8) and based on the prescription data (12) received by the receiving means (7);

a displaying means (9) for displaying a distribution position determined by the position determining means (13);

characterised in that:

the assignment condition stored in the storing means (8) includes an assignment by a maximum package number having a condition of not exceeding a maximum package number that can be assigned to the tray (5);

the receiving means (7) is arranged to sequentially receive prescription data (12) associated with a plurality of prescriptions, each prescription being associated with a package number;

the position determining means (13) is configured to at least sequentially count the package numbers for prescriptions in the prescription data (12)

sequentially received by the receiving means (7) and, while an accumulated value of the counted package numbers does not exceed the maximum package number based on the assignment by a maximum package number stored in the storing means (8), to determine the measures (4) of the tray (5) to which medicine

associated with the prescriptions in the sequentially received prescription data is to be distributed;

the medicine packaging device (2) comprises an extracting means for extracting data relating to a distributed medicine, the data being included in the prescription data received by the receiving means; and the medicine packaging device (2) comprises a printing means for printing a distribution instruction showing the measures (4) of the tray (5) to which the medicine

is to be distributed based on the data relating to a distributed medicine extracted by the extracting means."

Reasons for the Decision

1. Main request - Amendments, Article 123(2) EPC

1.1 Claims 1 to 7 and the adapted description have not been amended in such a way that they contain subject-matter which extends beyond the content of the application as filed. Support for the amendments can be found, in particular, in paragraphs [65] to [67], relating to figure 15, of the application as filed (reference is made to the publication EP 2 206 649 A1).

1.2 The requirements of Article 123(2) EPC are therefore met.

2. Independent claims 1 and 7 of the main request - Clarity, Article 84 EPC

2.1 Due to the reformulation of the independent device claims 1 and 7, corresponding to the independent device claims 1 and 6 underlying the impugned decision, the examining division's objection concerning lack of clarity of the term "the medicine" in connection with the position determining means became redundant.

2.2 The requirements of Article 84 EPC are therefore met.

3. *Claim 1 of the main request - Inventive step, Articles 52 and 56 EPC*

3.1 Document D8 is considered, as in the appealed decision, to be the closest prior art. As this document is in Japanese reference will be made in the following also to the description of D9 (US 2009/152291, in English) which claims priority from D8 and has the same technical content. D8 discloses a device for manually distributing medicines into a preliminary dispensing cassette which is partitioned into a plurality of cells. The preliminary dispensing cassette has a structure that allows an operator to detachably mount it to the device for manually dispensing of medicines according to a prescription, see paragraph 49 of D9. Information relating to the medicines to be manually dispensed by the device is provided in an information medium which is attached to the preliminary dispensing cassette, see paragraph 49 of D9. The information medium is provided in the form of a **barcode label** that specifies the identification number of a prescription, or provides a data carrier which stores the content of a prescription, see paragraph 49 of D9. In either case, it is clear that the information medium, and therefore **the cassette, is associated with a single prescription** and that the association of a particular prescription to a particular tray is determined before the cassette is inserted into the device for manually distributing the medicine.

3.2 It is undisputed, see also hereto paragraph 2.3.1.2 of the impugned decision, that at least the following features of the characterising part of claim 1 are not known from D8/D9:

a) the assignment condition stored in the storing means

(8) includes an assignment by a maximum package number having a condition of not exceeding a maximum package number that can be assigned to the tray (5), and

b) the position determining means (13) is configured to at least sequentially count the package numbers for prescriptions in the prescription data (12) sequentially received by the receiving means (7) and, while an accumulated value of the counted package numbers does not exceed the maximum package number based on the assignment by a maximum package number stored in the storing means (8) to determine the measures (4) of the tray (5) to which medicine associated with the prescriptions in the sequentially received prescription data is to be distributed.

3.3 According to the features of claim 1 and especially due to the above-mentioned differentiating features the distributed medicine supplying device according to claim 1 is configured to **count the number of packages** associated with a plurality of prescriptions associated with the prescription data which is sequentially received by the receiving means and, if the accumulated number of packages **does not exceed the assignment condition**, the associated prescriptions are assigned to the tray. In other words, the distributed medicine supply device assigns a number of sequentially received prescriptions to the tray under the condition that the accumulated package number does not exceed the number of measures defined in the tray. Thus, the claimed distributed medicine supplying device can determine the distribution position of the medicine in the tray for a particular prescription relative to a plurality of the sequentially received prescriptions associated with prescription data and in accordance with the maximum

package number of the tray.

- 3.4 In this manner, the distributed medicine supplying device of claim 1 optimises the number of prescriptions that can be assigned to a tray, thereby providing improved efficiency over prior art devices.
- 3.5 The objective technical problem over the disclosure of D8/D9 is therefore to be seen in the improvement of the efficiency of the known medicine distribution process.
- 3.6 D8/D9 relies on a **one-to-one relationship between the prescriptions and the trays**. For example, paragraph 49 of D9 describes that an "information medium" in the form of a **barcode** is provided which specifies the content of a prescription to be dispensed manually (or an ID number of the prescription).
- 3.7 In order to modify the system of D8/D9 so as to provide multiple prescriptions in a single cassette, it would therefore be necessary to provide multiple such barcodes for each cassette. This would clearly be undesirable, since it is likely to lead to confusion and prescriptions being mixed up.
- 3.8 Further, given that the prescription for a given cassette is preassigned to the tray before it is inserted into the device for subsequent distribution, it will be clear that there is **no motivation** to provide means to sequentially count the package numbers of prescriptions, nor is there any requirement to store an assignment by maximum package number condition.
- 3.9 Therefore, the skilled person faced with the above-mentioned technical problem would not consider implementing the above-mentioned differentiating

features to the device known from D8/D9. Rather than breaking the one-to-one relationship of prescriptions to cassettes on which D8/D9 relies, the skilled person would instead look at altering other aspects of D8/D9, such as the size of the cassettes or the manner in which they are loaded, which would not require such fundamental changes. This especially due to the fact that the skilled person cannot find any hint in its general technical knowledge or in D8/D9 towards a breaking the one-to-one relationship of prescriptions to cassettes taught in D8/D9.

3.10 Regarding the technical character of the subject-matter of claim 1 questioned in the decision, it is clear from, *inter alia*, paragraphs 5 to 9 of the application as filed, that the present invention is concerned with improving the efficiency of the medicine distribution process. The skilled person concerned with improving such efficiency would therefore be a process engineer.

3.11 Furthermore, the above-mentioned differentiating features a) and b) relate to the functionality of a distributed medicine supplying device, and in particular to assigning medicine to measures of trays in a more efficient manner, due to the fact that a greater quantity of medicine may be assigned to each tray. These are clearly considerations that would be of concern to a process engineer, rather than any administrator. The invention clearly relates to technical means, i.e. to the configuration of the distributed medicine supplying device, for a technical purpose (greater efficiency), and therefore cannot be characterised as implementation of any administrative method.

3.12 For the above-mentioned reasons the subject-matter of claim 1 involves an inventive step.

4. *Claim 6 of the main request - inventive step*

4.1 Since the above-mentioned differentiating features a) and b) are also present in the form of method steps in the method claim 6, the argumentation presented above for the subject-matter of claim 1 applies also *mutatis mutandis* to claim 6.

4.2 Therefore, the subject-matter of claim 6 involves also an inventive step.

5. *Claim 7 of the main request - inventive step*

5.1 Since the above-mentioned differentiating features a) and b) are also present in claim 7, the argumentation presented above for the subject-matter of claim 1 applies also *mutatis mutandis* to claim 7.

5.2 Therefore, the subject-matter of claim 7 involves also an inventive step.

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 with the order to grant a patent on the basis of the following documents:

description: pages 1 to 5, 5A, 5B filed with the submissions dated 23 August 2017, pages 6 to 23 filed with entry into the regional phase before the EPO;

claims: 1 to 8 filed as main request with the submissions dated 23 August 2017;

drawings: figures 1 to 18 filed with entry into the regional phase before the EPO.

The Registrar:

The Chairman:



G. Nachtigall

V. Bevilacqua

Decision electronically authenticated