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**Datasheet for the decision
of 4 March 2021**

Case Number: T 1189/15 - 3.5.02

Application Number: 07723002.7

Publication Number: 1991972

IPC: G08C17/02, G08C19/28

Language of the proceedings: EN

Title of invention:

Radio receiver and transmitter apparatus for radio- controlled
automation systems for opening/closure

Patent Proprietor:

NICE S.P.A.

Opponent:

SOMFY ACTIVITES SA

Relevant legal provisions:

EPC Art. 54, 56, 83, 123(2)

EPC R. 80

Keyword:

Novelty - (yes)

Inventive step - (yes)

Sufficiency of disclosure - (yes)

Amendments - allowable (yes)

Amendment occasioned by ground for opposition - (yes)



Beschwerdekammern

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Case Number: T 1189/15 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 4 March 2021

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
20 March 2015 concerning maintenance of the
European Patent No. 1991972 in amended form.**

Composition of the Board:

Chairman R. Lord
Members: H. Bronold
A. Bacchin

Summary of Facts and Submissions

I. The appeal of the opponent lies from the interlocutory decision of the opposition division concerning the maintenance of European patent No. 1 991 972 in amended form according to the then main request.

II. The appellant (opponent) requested that the decision under appeal be set aside and that European patent No. 1 991 972 be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed (main request), or as auxiliary request that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the set of claims of the first auxiliary request as identified under point 7 of the decision under appeal.

III. In a communication under Article 15(1) RPBA 2007, the board informed the parties of its preliminary opinion concerning the objections raised against the main request by the appellant concerning novelty and inventive step, sufficiency of disclosure and admissibility of amendments, that preliminary opinion being in all points in favour of the respondent.

IV. With letter dated 16 January 2020, the appellant filed further arguments regarding novelty and inventive step of claim 1 according to the main request.

V. Oral proceedings before the board were held on 4 March 2021 as a videoconference using the Zoom platform.

VI. The following documents cited during the proceedings before the first instance are of particular relevance for this appeal:

D1 : EP 0 388 436 B1

D2 : WO01/77764 A2

D4 : WO03/054827 A1

D5 : WO03/107105 A2

D7 : WO03/081352 A2

D13: US 4,750,118

D16: US 6,324,089 B1

D18: EP 1 587 044 A2

VII. Claim 1 according to the patent as maintained in the decision under appeal (main request) reads as follows:

"An apparatus (1) for radio-controlled automation systems (4) for opening/closing curtains, entrance doors, rolling shutters, gates, barriers, electrical switches or the like **[feature A]**, comprising a radio receiver (3) **[feature B]** which is coupled to an electric motor or to an electrical switch for operating said opening/closure **[feature B1]** and comprising at least one radio transmitter (2) **[feature C]** for the remote actuation of said opening/closure **[feature C1]**, the radio receiver comprising actuation means (31, 35) for actuating said electric motor or said electrical switch **[feature D]** on the basis of the content of an actuation radio signal which originates from said at least one radio transmitter (2) **[feature D1]**, characterized in that said radio receiver (3) comprises a nonvolatile memory (32) which stores a certificate **[feature E]** which identifies the radio receiver (3) **[feature E1]** and is adapted to provide an authorization to perform any operation at said radio receiver (3)

[feature E2], said actuation means (31, 35) comprising stored instructions to perform said operation **[feature F]** if the actuation signal that originates from said at least one radio transmitter (2) or from an external programming unit (5) comprises, in encoded form, said certificate **[feature F1]** in addition to the identifying recognition code of the radio transmitter (2) **[feature F1i]** and a control code which corresponds to the operation to be performed **[feature F1ii]**, and to check whether said identifying recognition code is already stored in said nonvolatile memory of the radio receiver **[feature G]** and, if not, to store said identifying recognition code in said nonvolatile memory, and wherein **[feature G1]** said actuation means further contain stored instructions to perform the operation associated with the control code **[feature H]** even if said actuation signal does not contain said certificate **[feature H1]** but contains the recognition code of said radio transmitter or of said external programming unit already stored in the nonvolatile memory of the radio receiver **[feature H2]**." (references to features as used during the proceedings inserted by the board)

Claim 2 refers to claim 1 and explicitly includes features D to H2. Claims 3 to 21 are dependent on claim 1 and/or claim 2.

VIII. Given the tenor of the present decision, it is not necessary for the respondent's auxiliary request to be presented here.

IX. The appellant's arguments, as far as they are relevant for this decision, can be summarised as follows:

Feature groups F, G and H had to be interpreted more broadly in the sense that a signal was accepted by a

receiver if the receiver's memory contained preregistered codes, namely a recognition code of the transmitter only, a certificate of the receiver only, or the recognition code of the transmitter and the certificate of the receiver.

Feature G was known at least implicitly from most of the documents cited in the opposition. It was already known from documents D1, D2, D5 and D7 to extract the recognition code or the certificate from a received signal. Feature G represented a partial pairing in the sense that transmitter and receiver had already shared information that allowed them to communicate. The meaning given to feature G1 by the respondent and the board was too restricted. It was only features F and H that dealt with the execution of an operation. Features G and G1 were silent in this respect and did not define the execution of an operation. Features G and G1 were further not interrelated with features F and F1. The control code according to claim 1 could also be interpreted to mean the storing of a new recognition code that corresponded to the disclosures of documents D1, D2, D5 and D7.

The board's interpretation of feature H, that "only if" an expected certificate is missing, a check for the recognition code was carried out, had no basis in claim 1 which merely defined the condition as "even if". The embodiment allowed the operation to proceed without the verification of the certificate. Feature H1 was thus non-limiting and could be ignored when assessing the patentability of claim 1. Moreover, features G and H were both defined as method steps and related to different contexts. The expression "even if" resulted in feature H being only optional.

Claim 1 according to the main request was not novel over the disclosure of each of documents D1, D2, D5 and D7 and did not involve an inventive step over any of the following combinations of documents: D1 or D2 with D16 or common general knowledge, D5 with D18 or common general knowledge, D7 with D16, D1 or D2 with D5.

In particular, feature G1 appeared to relate to a step of pairing, as was known from document D4, which disclosed the securing of a pairing of transmitter and receiver, or from document D13, where in a programming mode, a code was permanently stored after said code had been received several times. In this regard, documents D4 and D13 could be combined with documents D1, D2, D5 and D7.

Moreover, the claimed invention was insufficiently disclosed. There was no disclosure for "an authorization to perform any operation at said radio receiver". The skilled person might consider this authorisation to be the comparison of the presence of the identifier in the memory and in the data frame, as a consequence of which it was not clear whether the patent was restricted to this simple comparison. Moreover, claim 2 was *de facto* an independent claim, such that the claims 12, 14 to 17 and 19 to 20 had unidentified and incorrect dependencies. It was also not clear how an "invention" as mentioned in these claims could be protected. In addition, the person skilled in the art could not realise a radio receiver which included an apparatus that itself comprised the radio receiver. Features G and G1 were not interlinked and contained no information about how the secure storing of a new transmitter was assured.

The patent also contravened Article 123(2) EPC since features G and G1 had been taken out of the context of the original disclosure. As explained with respect to figure 5, other conditions were clearly mandatory for features G and G1. According to features G and G1 any signal received provoked storing of the identifier at the receiver, which was not originally disclosed. Moreover, the amendment from "invention" to "radio receiver" in claims 11, 13 and 18 as well as to "apparatus" in claim 21 could not be derived directly and unambiguously from the application.

Finally, the amendments to claims 3 to 8 and 21 were not occasioned by a ground of opposition and thus contravened Rule 80 EPC, because it would have been sufficient to amend the independent claim in order to overcome the objection of lack of inventive step.

- X. The respondent's arguments, as far as they are relevant for this appeal, can be summarised as follows:

The appellant's interpretation of claim 1 according to the main request was too semantic and overlooked the fact that features F and G were linked by an "and" rather than an "or". The expression "even if" in the beginning of feature H could not just be ignored or interpreted to not further limit the subject-matter of claim 1. The actuation signal was always checked for the certificate. Only when no certificate was present in the actuation signal, was a second check for the recognition code in the memory carried out. Thus, none of features F, G and H was optional.

The subject-matter of claim 1 was also new and involved an inventive step because none of the prior art documents cited by the appellant disclosed features G

and H or rendered their combination with the remaining features of claim 1 obvious.

It was not clear why the appellant considered claim 1 insufficiently disclosed since the appellant themselves indicated how the person skilled in the art would carry out feature G. Moreover, features G and G1 had not been objected to for insufficiency of disclosure before the opposition division. The secure storing was dependent on the presence of the certificate and thus clearly disclosed. Moreover, the objections against the structure of dependency of claims 2, 12, 14 to 17 and 19 to 20 as well as regarding the expression "invention" merely represented clarity issues. However, clarity was not a ground for opposition.

Features G and G1 were also not taken out of context. They were disclosed in originally filed claims 1 and 2 and page 11, lines 14 to 17 of the original description. Further support was to be found on page 7, lines 23 to 29. There were no doubts that features G and G1 did not relate to a configuration/installation phase since the "radio actuation signal" containing the certificate and the recognition code was "for actuating said electric motor or said electrical switch". The term "invention" was used in original claims 13 to 20 and its later amendment to "apparatus or radio receiver" in some claims did not introduce any unsupported matter because "invention" was used in the dependent claims, and referred to corresponding independent claims which were directed to an "apparatus" (claim 1) and a "radio receiver" (claim 2).

The amendments to claims 3 to 8 and 21 were occasioned by an objection of lack of inventive step against granted claim 3, wherein the amendment of claim 3 into

a dependent claim also occasioned the amendments to claims 4 to 8 and 21.

Reasons for the Decision

1. Admissibility of the appeal

The appeal complies with Articles 106 to 108 EPC and with Rule 99 EPC and is therefore admissible.

2. Interpretation of claim 1 according to the main request.

There was dispute between the parties as to how features G, G1, H, H1 and H2 of claim 1 according to the main request have to be interpreted. The dispute was in particular about whether those features limited the subject-matter of claim 1 or were merely optional.

The board disagrees with the appellant that features F, G and H can be interpreted broadly to correspond to nothing more than a check of the receiver's memory for a recognition code of the transmitter, a certificate of the receiver or both, because that interpretation, amongst other details, ignores how the check according to feature G is defined.

The allegation that features F and G were not interrelated is not correct, because those features are clearly linked by the conjunction "and". Even if they were not interrelated by the word "and", this could not result in these features being ignored or regarded as

merely optional. On the contrary, they are to be understood in conjunction with each other.

The board is also not convinced by the appellant's argument that feature G merely defined a partial pairing process. Pairing would require both interacting elements, i.e. the transceiver and the receiver, to store respective identification information. This is however not true for the subject-matter of claim 1, according to which only the receiver has preregistered information. The subject-matter of claim 1 is thus directed to a simple but secure identification system for home automation systems and the board does not consider it justified to interpret into the wording of claim 1 a broader aliud that is not actually claimed. A reinterpretation of feature G to mean merely parts of a pairing process is thus not justified.

The board further disagrees that feature H is merely optional. Feature H clearly defines additional functionality. It defines that the actuation means contain stored instructions to perform the operation associated with the control code. Features H1 and H2 further define the functions of these instructions to be that the operation is performed even if the actuation signal does not contain said certificate according to feature F1 (feature H1) but does contain the recognition code of the radio transmitter or said external programming unit, under the condition that this is already stored in the memory of the radio receiver (feature H2).

The board has therefore arrived at the conclusion that all of the features defined in claim 1 of the main request are mandatory and are thus limiting features of the claimed apparatus.

3. Patentability

The board does not agree with the appellant that the subject-matter of claim 1 was known before the priority date from the disclosure of any one of documents D1, D2, D5 and D7.

Moreover, the board also does not agree with the appellant that the subject-matter of claim 1 lacks an inventive step over any of the following combinations of documents: D1 or D2 with D16 or common general knowledge, D5 with D18 or common general knowledge, D7 with D16, D1 or D2 with D5, or document D4 or D13 with any of documents D1, D2, D5 or D7.

In particular, as argued by the respondent, features G and H according to claim 1 are not known from the cited documents or rendered obvious by any of the combinations brought forward by the appellant.

(a) Feature G)

The only disclosure in document D1 cited by the appellant in this context is page 8, lines 35 to 38. However, this cited passage of D1 does not disclose the claimed check according to feature G.

With their letter dated 16 January 2020 the appellant also referred to annex B and pages 68 and 69 of D1 but did not indicate where the check according to feature G is disclosed on those pages.

Regarding document D2, feature G is allegedly disclosed on page 15, lines 12 and 13 and pages 31 and 32. However, those passages relate to a programming mode, during which no control of a motor or a switch is carried out. Moreover, the check according to feature G is not disclosed in document D2. Thus, document D2 also does not disclose feature G.

The first embodiment according to document D5 on pages 9 and 12 cited by the appellant as disclosure of feature G does not use certificates but instead changes the configuration of the receiver to refuse commands from transmitters other than the first. Thus, it is not capable of carrying out the check according to feature G, which requires a certificate.

The only passage cited by the appellant in document D7 regarding feature G is page 8, lines 3 and 4. The board does not agree with the appellant that the check required by feature G is disclosed in this passage. This passage merely discloses the content of the memories of bidirectionally communicating objects.

The appellant argued further, that feature G was disclosed in column 1, line 6 to 20 and column 3, lines 18 to 20 of document D16. The board disagrees, and notes that those two passages relate to the description of the background art on the one hand and to the detailed description of the preferred embodiment on the other hand. Moreover, the board is not convinced that the signal disclosed in D16 corresponds to the claimed actuation signal which occurs during operation of the apparatus.

Regarding document D18, the appellant merely referred to paragraphs [0051] and [0052] as disclosure for

features G and H and argued that document D18 was directed towards a telecommunication system between transmitters and receivers, where an identifier was recorded provided the transmission of said identifier was secured via another device known to the system. The board notes in this respect that the combination of features G and H involves numerous features which the appellant did not discuss. The board is therefore also not convinced by the appellant's arguments regarding document D18.

The appellant's additional objections of lack of inventive step of solely feature G1 based on documents D4 and D13 as presented for the first time in their letter dated 16 January 2020 are not sufficiently substantiated.

The appellant essentially argued that feature G1 related to a step of securing the pairing between a transmitter and a receiver and that such securing was already known from document D4, page 8, line 29 to page 9, line 18. However, as set out above under point 2., feature G1 can not be interpreted as meaning simply the pairing of a transmitter and a receiver.

With respect to document D13, the appellant referred to column 2, lines 3 to 12 and argued that in a programming mode a code was permanently stored after said code had been received several times, which corresponded to securing the system of codes of feature G1. As already pointed out with respect to document D16, the board interprets feature G to apply to normal operation of the claimed apparatus and not to a programming mode that needs to be executed before the normal operation of the apparatus.

In addition, the appellant has not presented any arguments as to why the person skilled in the art would have combined document D4 or D13 with any of the other documents D1, D2, D5 and D7 mentioned by the appellant in this respect. The board is thus not in a position to understand why the appellant is of the opinion that the subject-matter of claim 1 according to the main request should be rendered obvious by a combination of document D4 or D13 with any of documents D1, D2, D5 or D7. Therefore, these combinations cannot be regarded as being substantiated.

The board has thus arrived at the conclusion that none of the combinations of documents presented by the appellant renders features G and G1 according to claim 1 of the main request obvious.

(b) Feature H)

The passage cited by the appellant on pages 67 and 68 of document D1 in this respect only indicates different data formats and does not seem to disclose the check required by feature H, i.e. that in the case that the (expected) certificate is missing, it is checked whether the identifying recognition code of the radio transmitter is already stored in the nonvolatile memory of the radio receiver. Consequently, document D1 does not disclose feature H.

The board is not convinced by the appellant's argument that feature H was disclosed in D2, because document D2 disclosed data frames that do not contain a certificate. The board's understanding of feature H is that a check is made for a certificate, and only if an expected certificate is missing, is a check for the

identifying recognition code of the radio transmitter in the nonvolatile memory of the radio receiver carried out. The cited passage of D2 does not disclose this feature though. The appellant argued in this context that the board's interpretation of feature H had no basis in claim 1 when this claim was interpreted in the light of figure 5. The board disagrees. The board's interpretation is based on the subject-matter claimed in claim 1. Whether figure 5 of the contested patent suggests another sequence of steps to be carried out is irrelevant for the interpretation of claim 1 because the wording of claim 1 is clear in itself, which is also uncontested. Where the wording of a claim has a clear technical meaning, neither the description nor the figures can be used to interpret such a wording in a different way (cf. Case Law of the Boards of Appeal of the European Patent Office, 9th edition, 2019, II.A. 6.3.1).

Since document D5 does not even disclose a certificate in the sense of feature G, the board concludes that D5 cannot disclose feature H, because this requires first determining that the certificate is missing.

Regarding document D7, the appellant argued that feature H was disclosed on page 8, lines 22 to 28 or page 11, lines 28 to 33. The board disagrees. These cited passages merely disclose that it is sufficient if a transmitter holds the required key (page 8, lines 22 to 28) or that a pairing of objects may be carried out if the receiver does not know the transmitter ID (page 11, lines 28 to 33). The board therefore concludes that the cited passages do not disclose the check required by feature H.

With respect to the disclosure of feature H in document D18 the board also does not concur with the appellant, for reasons corresponding to those given above regarding the disclosure of feature G in this document.

Consequently, the board arrived at the conclusion that also feature H is not rendered obvious by any of the combinations of documents presented by the appellant.

The appellant's arguments with respect to combinations of the disclosure of documents D1, D2, D5 or D7 with the common general knowledge of the person skilled in the art do not take into account the details of features G and H, but merely allege that the person skilled in the art would know how to implement the function resulting from features G and H. As already indicated in the communication under Article 15(1) RPBA 2007 and taking into account the board's understanding of features G and H (see point 2 above), the board does not agree with this line of argument.

As is apparent from the above analysis of the disclosures of the documents cited by the appellant, the board finds that none of the cited documents discloses or hints towards features G and H in combination.

Consequently, the board has reached the conclusion that the subject-matter of claim 1 in amended form according to the interlocutory decision of the opposition division is novel over each of the cited documents and that it is further not rendered obvious by any of the combinations of documents or the common general knowledge substantiated by the appellant. The same applies to claim 2, since that claim also includes all the features discussed above.

4. Sufficiency of disclosure - Article 83 EPC

With respect to insufficient disclosure, the question as to whether the appellant's arguments should have already been filed before the opposition division and should therefore not be taken into account can be left aside, since the board has reached the conclusion that the claimed invention is sufficiently disclosed in the sense of Article 83 EPC.

The arguments of the appellant regarding insufficient disclosure are in part self-contradictory. On the one hand, it was argued that the patent lacks disclosure for "an authorization to perform any operation at said radio receiver" because no means for carrying out such authorisation is described in the patent. On the other hand, the appellant themselves argued that the person skilled in the art might consider this authorisation to be the comparison of the presence of the identifier in the memory and in the data frame, which conclusion should not be possible if it were true that the disputed feature was insufficiently disclosed. The board is thus not convinced by this argument.

Moreover, the appellant argued that claim 2 had to be interpreted as an independent claim and that the dependencies in claims 12, 14 to 17 and 19 to 20 were incorrect. The board disagrees. The wording of claim 1 starts with "An apparatus (1) for, comprising a radio receiver (3)...". Although the wording of claim 2 starts with "The radio receiver (3) for the apparatus (1) according to claim 1...." this does not negate the fact that the radio receiver is a mandatory feature of claim 1. This purely semantic difference cannot

therefore result in disclosure being insufficient within the meaning of Article 83 EPC.

The expression "invention" in some of the dependent claims merely represents a reference to the content of the claims referred to. In the absence of any further reasoning of the appellant, the board cannot concur with the appellant in this respect either.

Regarding all of the above objections concerning insufficiency of disclosure, the board has arrived at the conclusion that those are *de facto* objections of lack of clarity under Article 84 EPC such that they can not result in the claimed invention being insufficiently disclosed in the sense of Article 83 EPC.

Further, the appellant argued that features G, G1 and H2 did not result in the desired secure storing of new radio transmitters in the memory of the radio receiver.

The board does not agree with the appellant in this respect either. According to claim 1 the "secure storing" results directly from features F and G which specify that the identifying recognition code is stored in the nonvolatile memory of the radio receiver only if the actuation signal comprises the certificate.

Further, commands according to feature H2 are only executed without the certificate if the identifying recognition code is already present in the nonvolatile memory, i.e. if it has been stored in the memory following an actuation signal comprising the required certificate. The board is convinced that this sequence of measures according to claim 1 discloses the secure storing in a manner sufficiently clear and complete for it to be carried out by a skilled person.

Thus, the board concludes that the wording of claim 1 in amended form according to the interlocutory decision of the opposition division complies with the requirement of Article 83 EPC.

5. Amendments - Article 123(2) EPC

According to the appellant, features G and G1 were taken out of their initially disclosed context. Further, it was not clear, whether they belonged to a configuration phase or a use phase of the claimed apparatus. Therefore, they constituted an inadmissible generalisation. Moreover, the term "invention" had been replaced by "apparatus" in claim 21 or "apparatus or radio receiver" in claims 11, 13 and 18. Since "invention" was not defined, it was not possible to deduce by which term "invention" could be replaced.

The board does not find the appellant's arguments convincing in this respect. The paragraph on page 11 of the original disclosure, in which features G and G1 are originally disclosed, does not seem to disclose any other features which were inevitably linked to features G and G1. This is also evident from originally filed claims 1 and 2, as already set out by the respondent in their reply to the appeal (page 10, point II.1.11). Further, there is no suggestion in the patent that features G and G1 are used during a configuration phase. To the contrary, the actuation signal according to claim 1 to which they relate comprises a control code explicitly intended for operating a motor or a switch.

Moreover, the amendment regarding the expression "invention" in the claims is originally disclosed since it merely concerns dependent claims referring back to independent claims defining an "apparatus" or a "radio receiver". Thus it is immediately apparent, that the "invention" referred to in the dependent claims can only mean the "apparatus" or "radio receiver" of the corresponding higher ranked claims.

The board also does not agree with the appellant's argument that regarding features G and G1, leaving out the aspect that the identifying recognition code is "acquired" from the actuation signal as disclosed on page 11, line 14 of the originally filed description, constituted an inadmissible generalisation. The wording of claim 1 objected to by the appellant can be found literally in originally filed claim 1.

The board has thus arrived at the conclusion, that the patent in amended form according to the interlocutory decision of the opposition division does not contravene Article 123(2) EPC.

6. Amendments - Rule 80 EPC

Contrary to the appellant's arguments, the board finds that the amendments to claims 3 to 8 and 21 are occasioned by an objection raised by the appellant under Article 100(a) EPC during opposition, namely an attack of lack of inventive step against granted claim 3 (see the grounds of opposition II.2.6 to II.2.10). The amendment to claim 3 from an independent claim to a dependent claim, in order to overcome the objection of lack of inventive step, can be regarded as a direct cause of the other amendments to claims 4 to 8 and 21,

as argued by the respondent in their reply to the appeal under point II.1.12, such that all the amendments to claims 3 to 8 and 21 were occasioned by a ground of opposition.

Therefore, the board concludes that the amendments to claims 3 to 8 and 21 of the main request comply with Rule 80 EPC.

7. Conclusion

Since none of the appellant's objections against the interlocutory decision concerning the maintenance of the patent in amended form is justified, the board cannot accede to the appellant's request to set the contested decision aside.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated