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**Datasheet for the decision
of 25 October 2018**

Case Number: T 1519/17 - 3.4.03

Application Number: 05075146.0

Publication Number: 1557804

IPC: G07G1/14, G07F13/02, G06Q20/00

Language of the proceedings: EN

Title of invention:
Vending control apparatus

Patent Proprietor:
January Patents Limited

Opponent:
Navarra Retail Systems Ltd.

Headword:

Relevant legal provisions:
EPC 1973 Art. 56
RPBA Art. 13(1), 13(3), 15(1)

Keyword:
Inventive step - main and auxiliary request - (no)
Late-substantiated auxiliary request - admitted (yes)

Decisions cited:

T 1732/10

Catchword:



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Case Number: T 1519/17 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 25 October 2018

Appellant: January Patents Limited
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 19 May 2017
revoking European patent No. 1557804 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman	G. Eliasson
Members:	T. M. Häusser
	C. Heath
	M. Papastefanou
	W. Van der Eijk

Summary of Facts and Submissions

- I. The appeal of the patent proprietor concerns the decision of the opposition division to revoke the European patent No. EP-B-1557804 (Article 101 (2) and (3) (b) EPC).
- II. The opposition had been filed against the patent as a whole. Grounds of opposition were lack of novelty and lack of inventive step (Articles 100(a), 54(1) and (2), and 56 EPC 1973).
- III. Reference is made to the following documents:
- A3: WINCOR NIXDORF, *BEETLE POS family, BEETLE/iPOS*,
January 2003,
A13: DE 44 21 067 C.
- IV. At the oral proceedings before the board the appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained as granted (main request), or in the version of the auxiliary request as filed with the grounds of appeal.
- The respondent (opponent) requested that the appeal be dismissed.
- V. The wording of the independent claims of the main request and of the auxiliary request is as follows:

Main request:

"1. An electronic point of sale (EPOS) multi-task apparatus which is linkable to a main server over a network, the apparatus comprising a central processing unit and associated memory, a user input device such as

a keyboard and a bar code scanning means, a printer and a releasable and lockable till drawer, the apparatus having a plurality of software control modules for controlling separate ones of the multi task functions, characterised in that the EPOS apparatus has means for controlling at least one apparatus for vending packed products, the vending apparatus control means comprising a software module operable to receive commands from a user, and in response to acceptable commands, the software module is operable to activate a dispensing mechanism of the vending apparatus whereby the required packed product is dispensed."

Auxiliary request:

Claim 1 of the auxiliary request differs from claim 1 of the main request in comprising the following additional feature:

"the vending apparatus control means comprises a vending button on the user input device operable to display a list of vending options; means for checking for a valid selection; means for sending a vending message to a vending machine server for vending the desired packed product; means for checking if the packed product vend was successful and means for adding the value of the vended packed product to a total invoice."

VI. The parties put forward essentially the following:

(a) Main request

(i) Admission of document A13

At the oral proceedings before the board the appellant withdrew its objection that the opposition division should not have admitted document A13 into the opposition proceedings.

(ii) Inventive step

The *appellant* argued that the closest state of the art was document A13. The objective technical problem was to provide an EPOS with increased security. The skilled person would not - even when taking into consideration the teaching of document A3 - arrive at the claimed subject-matter, which therefore involved an inventive step.

The *respondent* was of the opinion that the claimed invention was a straightforward connection of a vending machine as described in A13 to the conventional EPOS known from document A3 and thus did not involve an inventive step.

(b) Auxiliary request

(i) Admission of the request

The *appellant* was of the opinion that the respondent was in a position to deal with the auxiliary request and that this request should therefore be admitted into the appeal proceedings.

The *respondent* argued that the auxiliary request was not sufficiently substantiated in the grounds of appeal and hence should not be admitted into the appeal proceedings.

(ii) Inventive step

The *appellant* argued that the problems addressed by the additional features were theft by the EPOS operator and the jamming and lack of products in the vending machine. The skilled person would not consider the claimed solution.

The *respondent* submitted that some of the additional features were known from document A13 while the remaining additional features were mere implementations of the administrative aims of checking and invoicing.

Reasons for the Decision

1. Main request - inventive step

1.1 Closest state of the art

In the decision under appeal the opposition division considered document A13 the closest state of the art (see point 5.1.1.2 of the Reasons). Both parties also argued inventive step taking document A13 as the starting point.

Indeed, document A13 discloses - as detailed below - subject-matter that is conceived for the same purpose as the claimed invention, namely to provide an electronic point of sale multi-task apparatus, and has the most relevant technical features in common with it. Document A13 is therefore regarded as the closest state of the art.

1.2 Distinguishing features

1.2.1 Document A13 discloses (see column 1, lines 3-6 and 65-68; column 3, line 49 - column 4, line 46; Figure 1) an automatic product dispenser 10 to be used in a supermarket, in particular an automatic cigarette vending machine, comprising a plurality of product chutes 12, in which cigarette packets 14 may be stacked according to brands. The automatic product dispenser 10 is connected to an electronic cash register 20 by means of a multi-lead data line 18. The selection of the packets of cigarettes 14 is carried out via the keyboard 22 of the cash register 20. By the selection of the cigarette packets 14 by means of the keyboard 22 of the electronic cash register 20, the packets of cigarettes 14 will be automatically charged to the customer. They could also be recorded as sale by the data processing system, in case the cash register 20 is connected to such a system.

Using the wording of claim 1 of the main request, document A13 discloses therefore an electronic point of sale apparatus (electronic cash register 20) which is linkable to a main server (data processing system for recording a sale) over a network, the apparatus comprising a central processing unit and associated memory (implicit feature of the *electronic* cash register 20), a user input device such as a keyboard (22), and a releasable and lockable till drawer (necessary feature of the cash register 20).

This is undisputed between the parties.

1.2.2 In the decision under appeal the opposition division held that the device of document A13 was a "multi-task apparatus" as it had the functionalities of price calculation and product delivery (see point 5.1.1.2 of the Reasons).

The appellant objected to this assessment as the functionalities cited by the opposition division merely related to different parts of the single task of selling cigarettes. Dependent claims 9-11 of the patent made it clear how "multi-task" should be understood by specifying various examples of tasks: controlling a car wash (claim 9), topping up a mobile phone (claim 10), and monitoring fuel dispensing pumps (claim 11).

The board agrees with the appellant in that the opposition division's interpretation of the expression "multi-task" is contrary to how it should be understood in the context of the dependent claims and the description of the patent. From these it is evident that the expression is meant to denote an apparatus that is capable of engaging in different types of sales activities. However, the electronic cash register 20 of document A13 functions not only as a regular cash register for processing the purchases of groceries and other products on sale in the supermarket but also as a means for controlling the sales of cigarettes using the automatic product dispenser 10 and is therefore considered a multi-task apparatus within the above meaning.

- 1.2.3 The opposition division held further that the device of document A13 also comprised a plurality of software modules (*ibid.*).

The appellant argued that document A13 disclosed neither software modules nor that the cash register 20 was loaded with software controlling the vending machine's functions. These were rather controlled by the vending machine itself.

The board notes that the user operates the automatic product dispenser 10 of document A13 by selecting the desired packet of cigarettes 14 using the keyboard 22 of the electronic cash register 20, namely by pressing one of a number of dedicated buttons or by entering an alphanumeric code or a key combination. The selected packet of cigarettes 14 is then delivered via dispensing chute 17 and opening 24 (see document A13, column 4, lines 1-15). Hence, the electronic cash register 20 effectively controls the functioning of the automatic product dispenser 10. Moreover, since the electronic cash register 20 comprises a central processing unit and memory and is linkable to a server (which is admitted by the appellant, see point 1.2.1 above), its operation is necessarily controlled by software. The different parts of that software for controlling on the one hand the processing of regular purchases and on the other hand the functioning of the automatic product dispenser can be considered as different software control modules.

- 1.2.4 Finally, the opposition division held that document A13 did not disclose a printer (see point 5.1.1.2 of the Reasons). The appellant agreed, stating that A13 contained no explicit disclosure of a printer.

The board is of the opinion that the integrated electronic cash register of A13, which is adapted to perform accounting tasks such as automatically charging the customer for purchased products and providing a server with relevant data for bookkeeping purposes (see A13, column 4, lines 37-46), must also be able to produce receipts for customers as acknowledgements of the executed transactions. The presence of a printer is thus considered to be implicitly disclosed in A13.

- 1.2.5 In view of the above, the subject-matter of claim 1 of the main request differs from the device of document A13 only in comprising
- (i) bar-code scanning means.

1.3 Objective technical problem

The opposition division was of the view that the objective technical problem could be considered to be the upgrading to a more modern EPOS (see point 5.1.1.2 of the Reasons).

The appellant argued that the technical problem of the invention was to provide an EPOS with increased security against theft.

In the board's view the appellant's problem is formulated having regard to the integration of the control of the vending machine into the EPOS (see paragraphs [0033] and [0034] of the patent). However, this is already known from document A13. Therefore, the problem has to be re-formulated by taking into account document A13 and considering only the effect of the distinguishing feature over this document as defined under point 1.2.5 above.

Since the effect of the bar-code scanning means is to modernize the electronic point of sale apparatus, in particular in relation to the processing of regular purchases, the board agrees with the opposition division in the formulation of the objective technical problem.

1.4 Obviousness

The opposition division considered it obvious for the skilled person to consult document A3, in which bar-code scanning means were disclosed, and thus to arrive at the claimed subject-matter (see point 5.1.1.2 of the Reasons).

The appellant submitted that the peripheral devices of document A3 were not compatible with the cash register of document A13, since the USB standard had not been developed at the time of filing of A13.

The board agrees with the opposition division in that the skilled person would consider document A3, which is also related to electronic point-of-sale devices, for solving the posed technical problem of upgrading the cash register of document A13 to a more modern device. The skilled person would thus be led to enhancing the cash register by using the peripherals disclosed in A3, in particular a bar-code scanner.

Concerning the appellant's incompatibility objection the board notes that obviousness has to be assessed from the point of view of the skilled person at the priority date of the contested patent. In the present case the skilled person would therefore - when attempting to solve the posed problem - take into account the computer technology at the priority date (23 January 2004). In particular, the skilled person would update the cash register of A13 in such a way as to use state-of-the-art interfaces of that time (for example USB technology) and thus be in a position to connect the peripherals of document A3 without any technical difficulty.

Therefore, the subject-matter of claim 1 of the main request does not involve an inventive step (Article 52(1) EPC and Article 56 EPC 1973).

2. Auxiliary request

2.1 Admission of the request

2.1.1 The claims of the auxiliary request filed with the grounds of appeal are identical to those of auxiliary request 2 underlying the decision under appeal. In the decision the opposition division held that claim 1 of this request did not involve an inventive step over the combination of documents A13 and A3 (see point 7.4 of the Reasons).

In the grounds of appeal the appellant did not provide a proper reasoning as to why it considered that the opposition division's decision in relation to this request was wrong and thus had to be set aside. Such substantiation of the auxiliary request was only provided with the letter dated 25 September 2018 submitted in response to the summons to attend oral proceedings before the board. The effective filing date of the auxiliary request is therefore considered to be the date of that letter (see T 1732/10, point 1.5 of the Reasons).

Consequently, the filing of the auxiliary request is considered an amendment to the appellant's case and the board has to consider under Article 13(1) and (3) RPBA whether this request should be admitted into the proceedings.

2.1.2 The respondent argued that the auxiliary request should not be admitted into the proceedings as the board could

not issue its preliminary opinion on it so that the respondent had no way of knowing this opinion.

However, the parties have no right to such an opinion. Article 15(1) RPBA merely provides that the board *may* send a communication in preparation of the oral proceedings before the board. Moreover, even if such a communication is issued, it may well contain no preliminary opinion of the board but only - in accordance with Article 15(1) RPBA - a summary of the crucial points to be discussed at the oral proceedings and of the facts which no longer appear contentious. In fact, in the present case the communication under Article 15(1) RPBA did not contain a preliminary opinion of the board on inventive step in relation to the main request.

The fact that the late substantiation of the auxiliary request prevented the board from issuing a preliminary opinion on this request is therefore not considered a valid reason for not admitting this request.

- 2.1.3 The respondent argued further that the features added to claim 1 of the auxiliary request were "spurious" and could not contribute to the presence of inventive step.

The board notes that claim 1 of the auxiliary request contains five additional features over claim 1 of the main request and considers the respondent's sweeping statement about these features as inadequate for establishing that they are - *prima facie* - unsuitable for overcoming the objection of lack of inventive step.

- 2.1.4 Furthermore, the board sees no reason why the respondent or the board should *not* be in a position to discuss inventive step of the auxiliary request during

the oral proceedings before the board. In fact, during the opposition proceedings the respondent did argue that claim 1 of the auxiliary request (former auxiliary request 2) lacked inventive step. Moreover, since the opposition division decided on this issue the board is in a position to review the decision in this respect rather than giving a first ruling, which is in line with the purpose of appeal proceedings.

2.1.5 In view of the above the board admits the auxiliary request into the appeal proceedings.

2.2 Inventive step

2.2.1 Further distinguishing features

The opposition division held in the contested decision that some of the additional features were known from document A13, namely those related to the means for sending a vending message to a vending machine server and for adding the value of the product to a total invoice (see point 7.4.3 of the Reasons).

The appellant argued that none of the additional features was known from document A13.

The board agrees with the opposition division in that document A13 discloses means for sending a vending message to a vending machine server for vending the desired packed product. This follows from the above considerations (see point 1.2.3) demonstrating that the electronic cash register 20 effectively controls the functioning of the automatic product dispenser 10 using software. Moreover - as indicated under point 1.2.1 above - document A13 explicitly describes that the packets of cigarettes 14 are automatically charged to

the customer, thus disclosing the feature related to the means for adding the product value to a total invoice.

Finally, A13 discloses that the electronic cash register 20 may comprise control means for automatically switching over from an empty product storage unit 12 of the product dispenser 10 to another one which is filled with the same product (A13, column 2, lines 13-17), thus implying that the cash register comprises means for checking for a valid selection.

Consequently, in addition to feature (i) (see point 1.2.5 above) the subject-matter of claim 1 of the auxiliary request differs from the device of document A13, which represents the closest state of the art, in that the vending apparatus control means comprises

- (ii) a vending button on the user input device operable to display a list of vending options; and
- (iii) means for checking if the packed product vend was successful.

2.2.2 Objective technical problem

The opposition division held that the additional features were obvious implementations of a set of administrative requirements (see point 7.4.3 of the Reasons).

The appellant argued that the problems addressed by the additional features were theft by the EPOS operator and the jamming and lack of products in the vending machine.

As indicated under points 1.3 above, increased security against theft is already achieved in document A13 by the integration of the vending machine into the EPOS.

The problem of lack of products is also addressed in document A13 by providing means for checking for a valid selection (see point 2.2.1 above).

In order to be able to define the technical problem correctly the effects of features (ii) and (iii) have to be examined. The effect of feature (ii) is to provide a more modern alternative to the way the desired packet of cigarettes 14 is selected using the electronic cash register 20 of document A13 by means of dedicated buttons, alphanumeric codes or key combinations. Moreover, the board agrees with the opposition division in that feature (iii) is concerned with a non-technical aim, namely to comply with the legal obligation not to charge customers for products that have not been delivered.

In view of the above, the objective technical problem of the invention as claimed according to the auxiliary request is to upgrade the electronic point of sale apparatus of document A13 to a more modern device in such a way as to comply with the legal obligation not to charge customers for products that have not been delivered.

2.2.3 Obviousness

As indicated under point 1.4 above, the skilled person would consider document A3 when upgrading the cash register of document A13 to a more modern device. This would lead the skilled person to using the relatively large TFT display disclosed in A3 with the cash register of A13. Hence, it would occur to the skilled person to show a list of the various brands of cigarettes available for sale at the automatic product dispenser 10 on this TFT display thereby providing an

alternative way of selecting the desired packet of cigarettes 14.

Moreover, the prescribed aim of not charging customers for non-delivered products immediately leads the skilled person to providing means for checking the successful delivery of the sold products. Implementing this in concrete terms, e. g. by using a light barrier or a button to be pressed by the operator, poses no technical difficulties to the skilled person.

The skilled person would thus be led to enhancing the cash register of A13 not only with feature (i) (see point 1.4 above) but also with features (ii) and (iii) without exercising any inventive skill.

Therefore, the subject-matter of claim 1 of the auxiliary request does not involve an inventive step (Article 52(1) EPC and Article 56 EPC 1973).

3. Conclusion

Since none of the requests meets the requirements of the EPC, the opposition division's decision to revoke the contested patent is confirmed. Accordingly, the appeal has to be dismissed (Article 101 (2) and (3) (b) EPC and Article 111(1) EPC 1973).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated