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**Datasheet for the decision
of 20 February 2020**

Case Number: T 0667/18 - 3.5.05

Application Number: 05799470.9

Publication Number: 1815370

IPC: G06F19/00

Language of the proceedings: EN

Title of invention:

MESSAGE INTEGRITY FOR SECURE COMMUNICATION OF WIRELESS MEDICAL
DEVICES

Applicant:

Koninklijke Philips N.V.

Headword:

Common vital sign/PHILIPS

Relevant legal provisions:

EPC Art. 56, 83, 84, 123(2)
RPBA 2020 Art. 13(1)

Keyword:

Late-filed requests - admitted (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0667/18 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 20 February 2020

Appellant: Koninklijke Philips N.V.
(Applicant) High Tech Campus 52
5656 AG Eindhoven (NL)

Representative: de Haan, Poul Erik
Philips International B.V.
Philips Intellectual Property & Standards
High Tech Campus 5
5656 AE Eindhoven (NL)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 12 October 2017
refusing European patent application No.
05799470.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: E. Konak
D. Prietzel-Funk

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse the application due to lack of clarity (Article 84 EPC) and lack of novelty (Article 54 EPC).
- II. With its statement setting out the grounds of appeal, the appellant filed claims in the form of a main request and first to fourth auxiliary requests. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of one of these requests. It requested oral proceedings as a further auxiliary measure.
- III. In its preliminary opinion, the board raised objections under Articles 123(2), 84, 83 and 56 EPC.
- IV. In reply to the summons to oral proceedings the appellant filed a new main request and new first to third auxiliary requests to replace all of the requests on file.
- V. The appellant later informed the board that it would not be attending the scheduled oral proceedings. It withdrew its request for oral proceedings and requested a decision based on its written submissions. The oral proceedings were therefore cancelled.
- VI. Claim 1 of the main request reads as follows:

"A network system (10) comprising:
a plurality of medical devices ($12_1, 12_2, \dots, 12_n$)
adapted to send or receive messages (M) to one another,
each message including a data portion, each medical

device (12₁, 12₂, ..., 12_n) includes [sic]: a sensor (14) which is attached to a patient (16) to monitor at least a recurring vital sign; characterized in that each message includes a timestamp, which is based on the recurring vital sign, and each medical device (12₁, 12₂, ..., 12_n) includes a timestamp generating means (60) adapted to generate the recurring vital sign based timestamp, wherein the recurring vital sign based timestamp is a combination of a number of R-wave peaks of ECG signals and the time since the last R-wave peak, wherein the network system (10) further includes a synchronizing means (40, 42) adapted to automatically synchronize at least first and second communicating medical devices (12₁, 12₂) and to evaluate a difference between a send time (T_{SEND}) at which a message (M) departs from the first medical device (12₁) and a receive time (T_{RECEIVE}) at which the message (M) arrives at the second medical device (12₂)."

VII. Claim 1 of the first auxiliary request differs from claim 1 of the main request that its beginning reads as follows (with the additions underlined and the deletions ~~struck through~~):

"A network system (10) for ensuring that information being transmitted by and between a plurality of medical devices (12₁, 12₂, ..., 12_n) is securely protected, the network system (10) comprising:
~~a~~ the plurality of medical devices (12₁, 12₂, ..., 12_n)
[...]"

VIII. Claim 1 of the second auxiliary request differs from claim 1 of the main request as follows (with the additions underlined and the deletions ~~struck through~~):

"A network system (10) comprising:
a the [sic] plurality of medical devices (12₁,
12₂, ..., 12_n) adapted to send or receive messages (M)
to one another, each message including a data portion,
each medical device (12₁, 12₂, ..., 12_n) includes
[sic]: a sensor (14) which is attached to a patient
(16) to monitor at least a recurring vital sign,
wherein the recurring vital sign is a characteristic
peak of an ECG signal;
[...] arrives at the second medical device (12₂),
wherein each of the first and second communicating
medical devices (12₁, 12₂) [sic] has a peak detecting
means (48, 50) that is adapted to detect the
characteristic peak,
wherein the network system (10) further includes an
encrypting means (62) adapted to encrypt the message
and to send the message to a message means (64) of the
second medical device (12₂). "

- IX. Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that all occurrences of the word "recurring" have been deleted.

Reasons for the Decision

1. The appellant submitted in its letter of reply to the board's preliminary opinion that the claims of the new main request correspond to the claims of the then pending third auxiliary request with some amendments explained under section 1.1 of that letter (see the appellant's letter of 22 January 2020, page 1, item 1.1, first sentence).
2. The marked-up copy of the main request in the annex to that letter indicates those amendments as follows:

"A network system (10) comprising:
a plurality of medical devices ($12_1, 12_2, \dots, 12_n$) ~~for~~
adapted to sending or receiving receive messages (M) to
one another, each message including a data portion,
each medical device ($12_1, 12_2, \dots, 12_n$) includes: a
sensor (14) which is attached to a patient (16) to
monitor at least a recurring vital sign;
characterized in that each message includes a
timestamp, which is based on the recurring vital sign,
and each medical device ($12_1, 12_2, \dots, 12_n$) includes a
timestamp generating means (60) ~~for generating~~ adapted
to generate the recurring vital sign based timestamp,
wherein the recurring vital sign based timestamp is a
combination of a number of R-wave peaks of ECG signals
~~or other vital sign repetitions~~ and the time since the
last R-wave peak ~~or other vital sign repetition,~~
wherein the network system (10) further includes a
synchronizing means (40, 42) ~~for~~ adapted to
synchronizing automatically synchronize at least first
and second communicating medical devices ($12_1, 12_2$),
~~wherein the synchronizing means (40, 42) are adapted~~
and to evaluate a difference between a send time
(T_{SEND}) at which a message (M) departs from the first

medical device (12_1) and a receive time ($T_{RECEIVE}$) at which the message (M) arrives at the second medical device (12_2)."

3. However, the claim that this marked-up copy refers to corresponds neither to claim 1 of the "pending auxiliary request 3", which was the third auxiliary request filed with the statement setting out the grounds of appeal, nor to any other independent claim ever filed at any point during the proceedings to date.
4. The claim combines features such as "wherein the recurring vital sign based timestamp is a combination of a number of R-wave peaks of ECG signals and the time since the last R-wave peak" which has never been claimed before and which seems to be taken from page 5, lines 27 to 29 of the description, and "evaluat[ing] a difference between a send time (T_{SEND}) at which a message (M) departs from the first medical device (12_1) and a receive time ($T_{RECEIVE}$) at which the message (M) arrives at the second medical device (12_2)" which was included in dependent claim 2 of the pending third auxiliary request.
5. Presenting the board with such diverse amendments at this stage of the proceedings, especially without any explanation, is detrimental to procedural economy. The board cannot be expected to examine for the first time in the entire procedure whether the new combination of features according to amended claim 1 of the main request meets the requirements of Article 123(2) EPC.
6. Concerning novelty and inventive step, the appellant's submissions in its letter of reply are restricted to a reference to "items 1.3.1 and 1.3.2" of its statement setting out the grounds of appeal (see the

appellant's letter of 22 January 2020, page 3, item 1.4, first sentence). The statement setting out the grounds of appeal does not have items numbered in this way. Even if the board were to assume that these numbers might refer to items I-3.1 and I-3.2, the latter relate to the novelty and inventive step of the then main request, not the third auxiliary request on which the new main request is allegedly based. It is rather items IV-3.1 and IV-3.2 of the statement setting out the grounds of appeal which deal with the novelty and inventive step of the then third auxiliary request. Irrespective of which items the appellant might be referring to, as independent claims of none of the prior requests ever included the two features mentioned above under point 4, and, as the above-mentioned items in the statement setting out the grounds of appeal only discuss the independent claims of the then main request and the then third auxiliary request, the appellant has effectively filed a new main request without any substantiation with regard to novelty and inventive step. It is established case law that requests which are not properly substantiated are not admissible.

7. For these reasons, the board has used its discretion under Article 13(1) RPBA 2020 and did not admit the main request. As new first to third auxiliary requests are based on this inadmissible request, they are also inadmissible.
8. As there is no admissible request on file, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



C. Rodríguez Rodríguez

A. Ritzka

Decision electronically authenticated