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**Datasheet for the decision
of 25 April 2023**

Case Number: T 1626/19 - 3.4.03

Application Number: 08843739.7

Publication Number: 2208190

IPC: G07F11/00

Language of the proceedings: EN

Title of invention:

MANAGING MEDICATIONS AT THE BEDSIDE

Applicant:

CareFusion 303, Inc.

Headword:

Relevant legal provisions:

EPC Art. 123(2)
RPBA 2020 Art. 13(2)

Keyword:

Amendment after summons - taken into account (yes) - response to objection raised in the oral proceedings for the first time
Amendments - extension beyond the content of the application as filed - all requests (yes)

Decisions cited:

Catchword:



Beschwerdekammern
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Chambres de recours

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Case Number: T 1626/19 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 25 April 2023

Appellant: CareFusion 303, Inc.
(Applicant) 3750 Torrey View Court
San Diego, CA 92130 (US)

Representative: Epping - Hermann - Fischer
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 7 January 2019
refusing European patent application No.
08843739.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman T. Häusser
Members: M. Papastefanou
D. Rogers

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing the European patent application No. 08 843 739 (published as WO 2009/059013 A2) on the ground that neither the main nor the auxiliary request then on file involved an inventive step.
- II. At the oral proceedings before the board the appellant applicant requested that the decision under appeal be set aside and that a patent be granted upon the basis of the amended main request filed at the oral proceedings on 25 April 2023, or upon the basis of the auxiliary request filed with the statement of grounds of appeal.
- III. Claim 1 of the main request has the following wording:

A system for dispensing medication from within a patient's room, the system comprising:

a first dispenser fixed within the patient's room that includes a plurality of compartments of a plurality of optional medications, based on projected needs of the patient; the dispenser being configured to provide access to a respective optional medication selected from the plurality of optional medications only upon a request by an authorized caregiver;
and

a central control terminal located remote from the first dispenser, the central control terminal being configured to wirelessly connect to the first dispenser from a remote location and to remotely unlock, from the remote location, a specific one of the plurality of compartments storing an optional medication selected by the caregiver at the central control terminal,

wherein the first dispenser is configured to determine whether the selected optional medication is compatible with a required medication currently being administered to the patient before the specific compartment is remotely unlocked and to remotely unlock the specific compartment only after receiving confirmation that the selected optional medication is compatible.

- IV. Claim 1 of the first auxiliary request is worded as follows (differences to claim 1 of the main request underlined and struck through by the board):

A system for dispensing medication from within a patient's room, the system comprising:

a first dispenser fixed within the patient's room that includes a plurality of compartments of a plurality of optional medications, based on projected needs of the patient; the dispenser being configured to provide access to a respective optional medication selected from the plurality of optional medications only upon a request by ~~an~~ authorized ~~caregiver~~ personnel; and

a central storage location that stores optional medication for replenishing the first dispenser;

a central control terminal located remote from the first dispenser, the central control terminal being configured to wirelessly connect to the first dispenser from a remote location and to remotely unlock, from the remote location, a specific one of the plurality of compartments storing an optional ~~medication~~ medicine selected by ~~the~~ a caregiver at the central control terminal,

wherein the first dispenser is configured to determine whether the selected optional medication is compatible with a required medication currently being

administered to the patient before the specific compartment is remotely unlocked and to remotely unlock the specific compartment ~~only~~ after receiving confirmation that the selected optional medication is compatible and the caregiver is authorized to gain access to the optional medication.

- V. The appellant argued essentially that the claimed system found basis in a straightforward combination of the two main embodiments described in the application.

Reasons for the Decision

1. The claimed invention

The claimed invention relates to a system for dispensing medication comprising a dispenser fixed within a patient's room and controlled by a remote central terminal. Upon a request to dispense medication, the dispenser runs a compatibility check to confirm that the requested medication ("optional medication") is compatible with the medication the patient has been receiving ("required medication"). If the outcome of the check is positive, the central control terminal unlocks remotely the dispenser and provides access to the requested medication.

2. Main Request

- 2.1 Admission (Article 13(2) RPBA 2020)

The main request was filed during the oral proceedings after the board had expressed its opinion that the main request then on file contained added subject-matter and did not fulfil the requirements of Article 123(2) EPC.

This objection was raised by the board for the first time in the beginning of the oral proceedings. The board thus accepted the appellant's argument that there were exceptional circumstances within the meaning of Article 13(2) RPBA 2020 and admitted the new main request into the proceedings.

2.2 Added subject-matter (Article 123(2) EPC)

2.2.1 According to claim 1 of the main request, the claimed system comprises a central control terminal located remotely from the dispenser which can connect wirelessly to the dispenser. There is a caregiver at this central control terminal who selects the optional medication to be dispensed by the dispenser. The dispenser runs a compatibility check, whether the selected optional medication is compatible with the other (required) medication being administered to the patient. If it is found that the optional medication is compatible with the required medication, a corresponding confirmation is received by the system and the corresponding compartment in the dispenser is remotely unlocked.

According to the wording of the claim and the appellant's explanation, the remote unlocking of the dispenser compartment is done automatically from the central terminal upon positive outcome of the compatibility check.

2.2.2 In the application as originally filed, the compatibility check between optional and required medication is mentioned only with respect to the embodiment of Figure 2 (see application as published). In this embodiment, there is no central control

terminal. The caregiver is present in the patient's room, they request optional medication from the dispenser ("apparatus 202"), the dispenser runs the compatibility check and, if compatibility is confirmed, *the apparatus 202 can request the caregiver to unlock or otherwise deactivate the locking device 206* (see last four lines on page 8 of the published application). The dispenser (compartment) is thus not unlocked automatically after a positive outcome of the compatibility check, but it is the authorized caregiver who unlocks it.

2.2.3 The central control terminal is part of a different embodiment shown in Figure 4. In that embodiment, there is a caregiver at the central terminal and they select the optional medication for the patient, e.g. after the patient has called them and requested medication. The caregiver at the central control terminal can also remotely unlock the dispenser in the patient's room, so that the patient can retrieve the medication themselves. There is no mention of any compatibility check at the dispenser or at the central terminal in this embodiment (see page 9, lines 12 to 20 of the description of the application).

2.2.4 The appellant pointed out that the cited passage describing the second embodiment (on page 9, lines 12 to 20) referred to the dispenser in the patient's room as "apparatus 202" (see also Figure 4). The same apparatus (dispenser) was thus described with respect to the first embodiment (Figure 2) and the second embodiment (Figure 4). Running of the compatibility check before dispensing the selected medication was a function of that dispenser ("apparatus 202") and therefore, the dispenser would run this compatibility check before dispensing the requested medication also

in the context of the second embodiment, even if not explicitly mentioned.

Hence, in the claimed system the caregiver at the central location selected the requested optional medication, the dispenser ran the compatibility check and, upon positive outcome, a confirmation was sent to the central control terminal, which then unlocked the dispenser compartment with the selected medication automatically. The skilled person would derive this combination of features directly and unambiguously from the cited passages on pages 8 and 9 of the originally filed (published) application.

2.2.5 The board, however, notes that there is no disclosure in the application as originally filed of an *automatic* unlocking of the dispenser compartment with the selected optional medication after a positive outcome of the compatibility check. In the only relevant disclosure (last four lines on page 8), upon a positive outcome of the compatibility check ("clearance"), the dispenser requests the caregiver to unlock the dispenser.

Even if it were accepted that a combination of the two embodiments was envisaged in the application as originally filed, in the resulting system it would still have to be a caregiver unlocking the compartment to retrieve the medication after a positive compatibility check, since there is no basis for an automatic unlocking.

2.2.6 The board's conclusion is therefore that claim 1 of the main request contains subject-matter extending beyond the content of the application as originally filed,

contrary to the requirements of Article 123(2) EPC.

3. Auxiliary request, added-subject matter (Article 123(2) EPC

3.1 According to the last feature of claim 1 of the auxiliary request, there is an authorised caregiver, who retrieves the optional medication when the dispenser compartment is remotely unlocked.

Hence, in the system of claim 1 of the auxiliary request there is an authorised caregiver at the central control terminal, who selects the optional medication (see the penultimate feature of the claim), and another authorized caregiver at the patient's room, who retrieves the medication after the dispenser compartment is unlocked (see the last feature of the claim).

3.2 As explained previously with respect to the main request, there are two main embodiments of the claimed system described in the application. In one embodiment there is a caregiver near the dispenser, who requests and receives the optional medication. In the other embodiment there is a caregiver at the central control terminal, who selects the optional medication to be dispensed and may also remotely unlock the dispenser at the patient's room.

Even if those embodiments were combined, there is no basis for a system, where there are two caregivers, one at the central control terminal selecting the medication, and one at the dispenser requesting and receiving it, as defined in claim 1 of the auxiliary request.

During the oral proceedings, the appellant acknowledged that there was no basis in the application as originally filed for such an arrangement.

- 3.3 Moreover, the objection related to the automatic opening of the dispenser compartment after a positive compatibility check raised against the main request is equally valid for claim 1 of the auxiliary request, as well.
- 3.4 The board's conclusion is thus that claim 1 of the auxiliary request comprises subject-matter extending beyond the originally filed content of the application, contrary to the requirements of Article 123(2) EPC.
4. Since there is no allowable request on file, the appeal cannot succeed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

T. Häusser

Decision electronically authenticated