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**Datasheet for the decision
of 27 July 2023**

Case Number: T 1029/20 - 3.5.01

Application Number: 12883975.0

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IPC: G06Q10/00, H04Q9/00, G06Q10/06

Language of the proceedings: EN

Title of invention:

A SYSTEM AND A METHOD FOR DATA COLLECTION AND MONITORING OF A
DEFINED SPACE

Applicant:

Essity Hygiene and Health Aktiebolag

Headword:

Monitoring of consumables/ESSITY

Relevant legal provisions:

EPC Art. 111(1)
EPC R. 103(1)(a), 111(2)
RPBA 2020 Art. 11

Keyword:

Substantial procedural violation - (yes) - reimbursement of
appeal fee (yes)

Appealed decision - sufficiently reasoned (no)

Remittal - (yes)



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Case Number: T 1029/20 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 27 July 2023

Appellant: Essity Hygiene and Health Aktiebolag
(Applicant) 405 03 Göteborg (SE)

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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 18 December 2019 refusing European patent application No. 12883975.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Höhn
Members: L. Falò
L. Basterreix

Summary of Facts and Submissions

- I. This is an appeal against the examining division's decision to refuse European patent application No. 12883975.0.
- II. The application was refused on the ground of lack of inventive step of all requests in view of D1, WO 2005/065509.
- III. In the statement setting out the grounds of appeal, the appellant requested that the decision of the examining division be set aside and a patent be granted on the basis of the main, first or second auxiliary requests, corresponding to the refused main, fourth and fifth auxiliary requests and re-filed therewith. There was a further auxiliary request for oral proceedings. The appellant also requested reimbursement of the appeal fee according to Rule 103(1)(a) EPC in case the Board decided to remit the case to the first instance because of a substantial procedural violation.
- IV. In the annex to the summons to oral proceedings, the Board set out its preliminary view that a procedural violation had occurred and that, therefore, it was minded to remit the case to the department of first instance and order the reimbursement of the appeal fee.
- V. In a letter of reply dated 12 December 2022 the appellant withdrew the request for oral proceedings before the Board on the condition that the case be remitted to the first instance and that the appeal fee be reimbursed. Further, the appellant requested oral proceedings anew in the first instance proceedings. The Board subsequently cancelled the oral proceedings.

VI. Claim 1 of the main request reads:

A data collection and monitoring system for a defined space (1) within a public or commercial facility, comprising:

a plurality of sensors (5a, 7a, 9a, 10a, 11) of which at least one sensor (5a, 7a, 9a) is arranged for detecting the remaining amount of, and delivering data indicating the level of, a consumable in a dispenser (5, 7, 9) associated with said sensor (5a, 7a, 9a) and being positioned in said space (1);

a data collecting unit (12) arranged for wirelessly communicating with said sensors (5a, 7a, 9a, 10a, 11), and

a central server (14) associated with a storage medium (15), said storage medium (15) being adapted for storing and monitoring data related to said space (1),

wherein the data collecting unit (12) furthermore is arranged for communicating with the central server (14),

wherein the data collecting unit (12) comprises:

- at least one short range communication unit (12c) arranged to receive data from the sensors (5a, 7a, 9a, 10, 11),

- at least one memory unit (12b) arranged to store said data, and

- at least one long range communication unit (12d) arranged for relaying the data to the central server (14),

wherein data from at least one of the sensors (5a, 7a, 9a, 10, 11) is transmitted to the data collection unit (12) on a regular basis,

wherein said data collecting unit (12) is arranged for transferring data from said sensors (5a, 7a, 9a, 10a, 11) stored in the at least one memory unit (12b) to said central server (14) upon a status change of at least one of said sensors (5a, 7a, 9a) arranged for detecting the remaining amount of a consumable in a dispenser (5, 7, 9), and

wherein the system comprises a traffic sensor (11) communicating with said data collecting unit (12) and being adapted for detecting traffic data related to the number of visitors of said space (1), wherein said system is arranged for transmitting said traffic data from said traffic sensor (11) to said central server (14) upon a status change of the traffic sensor.

VII. Claim 1 of the first auxiliary request differs from the main request in that the features describing the data collection are complemented by the expression:

wherein said status change corresponds to a situation in which:

- the level of said consumable reaches at least one set threshold level corresponding to a need for refilling a consumable in said space (1), and

- wherein refilling of a consumable in said space (1) has occurred

and by the replacement of the features concerning the traffic sensor with the following features:

wherein the system comprises a traffic sensor (11) communicating with said data collecting unit (12) and being adapted for detecting traffic data related to the number of visitors of said space (1), wherein the traffic sensor (11) is arranged to transmit data to the data collection unit (12) at a certain regular interval, wherein said system is arranged for forwarding said traffic data from said traffic sensor (11) to said central server (14) upon a status change of the traffic sensor, and wherein the data collection unit (12) is arranged to determine whether the status change of the traffic sensor has occurred.

VIII. The second auxiliary request is based on the first auxiliary request. At the end of the claim, the wording

upon a status change of the traffic sensor, and wherein the data collection unit (12) is arranged to determine whether the status change of the traffic sensor has occurred

is changed to

upon said status change, such that data from at least one sensor (5a, 7a, 9a) arranged for detecting the remaining amount of a consumable in a dispenser (5, 7, 9), and data related to said traffic sensor (11), is sent simultaneously from the data collection unit (12).

IX. The appellant's arguments, in so far as they are relevant to the decision, can be summarised as follows:

A written decision should discuss in detail the facts, evidence and arguments which are essential to the decision and, if related to several requests, it should give reasons for the rejection of each one, as confirmed by the established case law of the Boards of Appeal. Claim 1 of the fourth auxiliary request included features which had not been discussed in the decision. Therefore, the decision was not sufficiently reasoned. This was a substantial procedural violation which justified the reimbursement of the appeal fee.

Reasons for the Decision

Background

1. The invention concerns monitoring consumables in public or commercial facilities. It includes a plurality of sensors, at least one of which monitors the amount of a consumable left in a dispenser associated with a defined space (page 1, line 6 to page 2, line 4, page 7, lines 1 to 8). The sensors periodically transmit data over a short-range wireless connection to a data collecting unit (DCU), which stores them in a memory. The DCU transfers the collected data to a central server upon detection of a status change of at least one of the sensors. The status change indicates, for example, that the amount of consumable has reached a predetermined minimum threshold (page 10, lines 4 to 22, page 11, lines 24 to 29, page 11, line 31, to page 12, line 10, claims 1 and 5). The system further comprises a traffic sensor which monitors the number of

visitors present in the associated space and periodically transmits the information to the DCU, which relays it to the central server upon detection of a status change of either the traffic sensor or of the sensor(s) monitoring the amount of consumable (page 4, line 26 to page 5, line 7, page 13, line 25 to page 14, line 10).

Substantial procedural violation

2. In the decision, the division came to the conclusion that claim 1 of the (then) fifth auxiliary request was not inventive in view of D1. The division further argued that the same objections applied to the higher ranking requests, because these only contained features present in the fifth auxiliary request.
3. The Board, however, agrees with the appellant that claim 1 of the fifth auxiliary request does not include all the features of the same claim of the fourth auxiliary request (reference is made to the refused set of requests).

In particular, it does not include the feature of the system transmitting data from the traffic sensor to the central server responsive to a status change of the traffic sensor. Therefore, the division's findings to the contrary are incorrect.

4. In the Board's view, however, in this case failure to separately address inventiveness of the fourth auxiliary request cannot be considered a substantial procedural violation.

The decision - at least in so far as it can be understood, see below - does address the appellant's

main arguments in favour of patentability of the fourth auxiliary request, particularly for what concerns the feature of detecting a status change of the traffic sensor (see page 15, first three paragraphs).

Moreover, the division's arguments concerning the alleged obviousness of transmitting sensor data when a threshold is reached - that is, when a status change is detected - obviously apply to all types of sensors, including the traffic sensor.

Hence, the Board is satisfied that the contested decision sufficiently addresses - at least implicitly - the issue of the inventiveness of the additional features of the fourth auxiliary request, as well as the appellant's main arguments in that respect.

5. Nonetheless, the Board is of the opinion that a substantial procedural violation has occurred, albeit for a different reason.
- 5.1 The examining division argued lack of inventive step of claim 5 in view of D1, WO 2005/065509. The decision includes a list of the features considered to be disclosed in D1 (see points 1 and 2, page 5 to page 8, first paragraph). However, references to the relevant passages of D1 are given only for some of the features on the list. For other features, the references appear to be provided in a separate section ("Technical infrastructure", page 8), or not provided at all. In particular, it appears that no basis is given for the feature of transferring sensor data to the central server when a threshold is reached (in the following, feature "B").

- 5.2 Even though the division concluded that the only novel feature was that of the traffic sensor "being adapted for detecting traffic data related to the number of visitors of said space" (page 8, feature "A"), this feature is also included in the list of features known from D1 (page 7, last paragraph).
- 5.3 Adding to confusion, the problem identified by the division ("when to update the status change", see page 8) appears to be derived from feature "B", rather than to the allegedly novel feature "A". Indeed, the division itself found that the objective technical problem was solved "*using a rule (administrative/non-technical rule) to predefine a threshold when to update the information*" (page 10, first paragraph), which was considered "trivial" (page 10, second paragraph).
- 5.4 The decision therefore fails to clearly identify the features which were considered disclosed in D1 and to explain how the division arrived at the formulation of the objective technical problem, which are fundamental elements of the assessment of inventive step under the well-established problem and solution approach. This makes it impossible for the reader to follow the logical chain of reasoning which led to the decision and to examine whether it was justified or not.
- 5.5 In view of the above, the Board concludes that the decision is not sufficiently reasoned and, therefore, does not meet the requirements of Rule 111(2) EPC, which constitutes a substantial procedural violation.
6. As a rule, fundamental deficiencies which are apparent in the proceedings before that department constitute special reasons for remitting the case (Article 11 RPBA).

Accordingly, the Board exercises its discretion under Article 111(1) EPC to set the decision aside and remit the case to the examining division for further prosecution.

7. Reimbursement of the appeal fee in full is equitable in view of the substantial procedural violation (Rule 103(1) (a) EPC).

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 for further prosecution.
3. The appeal fee shall be reimbursed.

The Registrar:

The Chairman:



T. Buschek

M. Höhn

Decision electronically authenticated