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**Datasheet for the decision
of 19 November 2024**

Case Number: T 1219/20 - 3.4.01

Application Number: 09701164.7

Publication Number: 2229752

IPC: G06K7/10, G07C9/00, H04B5/00

Language of the proceedings: EN

Title of invention:
SYSTEMS AND METHODS FOR PROGRAMMING AN RFID READER

Patent Proprietor:
Xceedid Corporation

Opponent:
dormakaba Deutschland GmbH

Headword:
RFID reader update / XCEEDID

Relevant legal provisions:
EPC 1973 Art. 54, 56
RPBA 2020 Art. 12(4)

Keyword:

Amendment to case - amendment within meaning of Art. 12(4) RPBA
2020 (yes)

Novelty - (no)

Inventive step - (no)



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1219/20 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 19 November 2024

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 February 2020 concerning maintenance of the
European Patent No. 2229752 in amended form.**

Composition of the Board:

Chairman P. Scriven
Members: B. Noll
R. Winkelhofer

Summary of Facts and Submissions

- I. The opponent's appeal is of the decision in which the Opposition Division found that the patent, in amended form, met the requirements of the EPC.

- II. In their statement of grounds of appeal, the opponent contested the findings in the impugned decision as regards the grounds for opposition under Articles 100(a) EPC (novelty and inventive step) and 100(b) EPC (sufficiently clear and complete disclosure of the invention). They also made a new objection of lack of novelty, based on a new document submitted with the notice of appeal.

- III. With their reply to the appeal, the proprietor filed claim sets for auxiliary requests 1-8.

- IV. The Board issued a communication with a preliminary opinion on the case, referring to the documents

D1: US 2006/0224901 A1,
D7: US 6,677,852 B1,
D13: WO 2006/098690 A1..

- V. The Board's communication stated that D13 would not be considered and, consequently, that there was no reason to consider auxiliary requests 5 - 8; that claims 1 and 4 of the main request, and claim 1 of auxiliary requests 1 and 2, apparently lacked novelty in view of

D7; that claim 1 of auxiliary request 3 lacked an inventive step in view of D7 and the teaching of D1; that claim 1 of auxiliary request 4 could not be understood and so could not be admitted; and that the objection under Article 100(b) EPC was not persuasive.

- VI. In substance, the opponent requests that the decision be set aside and amended such that the patent be revoked.
- VII. The proprietor requests that the appeal be dismissed (main request) or, in the alternative, that the patent be maintained on the basis of one of auxiliary requests 1-8, submitted with the reply to the appeal.
- VIII. Claim 1 of the main request reads (reference signs omitted):

An RFID reader update System, the System comprising:

a server, wherein the server is operable to provide an RFID reader update via a communication network;

an RFID reader, wherein the RFID reader comprises a near field communication interface and a processor; and

a portable update device, wherein the portable update device is operable to receive the RFID reader update via the communication network, and wherein the

portable update device is operable to transfer the RFID reader update to the RFID reader via the near field communication interface, wherein the RFID reader update includes instructions executable by the processor to modify the function performed by the RFID reader.

- IX. Claim 1 of auxiliary request 1 specifies the communication network as a *wireless communication network*, and that the RFID reader is operable to detect portable update devices within a communication distance of the RFID reader.

- X. Claim 1 of auxiliary request 2 adds that the portable update device is operable to *remotely connect to the communication network in order [to] receive the RFID reader update via the communication network.*

- XI. Claim 1 of auxiliary request 3 differs from that of auxiliary request 2 by replacing *portable update device* by *cellular telephone*, and by specifying that *the cellular telephone is operable to remotely connect to the communication network via a cellular telephone interface in order to receive the RFID reader update via the communication network.*

- XII. Claim 1 of auxiliary request 4 differs from that of auxiliary request 3 in that the *RFID reader update includes instructions executable by the processor to render the RFID reader able to receive information from a credential at a new frequency.*

- XIII. Claim 1 of auxiliary request 5 differs from that of auxiliary request 1 in that the RFID reader update also includes instructions *operable to uniquely identify the RFID reader.*
- XIV. Claim 1 of auxiliary request 6 differs from that of auxiliary request 1 in that *the RFID reader update includes instructions executable by the processor to modify the function performed by the RFID reader and data to be written to a memory of the RFID reader, the instructions comprising: first instructions operable to uniquely identify the RFID reader; and second instructions operable to cause the RFID reader to write the data to the memory of the RFID reader.*
- XV. Claim 1 of auxiliary request 7 differs from that of auxiliary request 1 by the features added in auxiliary requests 3 and 5.
- XVI. Claim 1 of auxiliary request 8 differs from that of auxiliary request 1 by the features added in auxiliary requests 3 and 6.
- XVII. The parties' submissions, insofar they are relevant to the decision, are set out in the reasons for the decision, below.

Reasons for the Decision

Main request, claim 1, novelty (Article 54 EPC)

1. D7 relates to a system with a configurable hand-held reader (Figure 1, reference 100). For the intended use in collecting data from RFID data tags, the reader is operated as a retrieval device, to read data via an RF transceiver unit (D7, column 4, lines 32-34) and to perform some operations on the collected data (column 7, lines 34-38). These operations are defined by instruction sets stored in the memory of the reader. The instruction sets can be changed, by the reader accessing a master control tag, and obtaining, from that master control tag, one or more new instruction sets and overwriting some or all of its previous instruction sets (D7, column 8, lines 6-10).

2. D7 further discloses an update operation mode for the system (D7, column 11, lines 50-64). In this mode, the instruction sets stored in the master control tag are updated: the reader 100, now operating as an updating device, receives these modified instruction sets from the computer system, stores them in its own memory and, when authorised, writes them to the master control tag. Permission for writing is controlled by keys in the reader. In the update operation mode, the reader operates as a portable device that contributes to the execution of a transaction, namely the updating of the master control tag with modified instruction sets. In the update operation mode, the master control tag implements the function of updating the instruction sets stored in it, by recognising the reader as an authorised update device and processing the information received over the wireless connection.

3. The patent defines an RFID reader *in its broadest sense to mean any device that is capable [of] wireless interaction with a credential, and upon recognizing or authorizing the credential, a particular function is implemented* (description, paragraph [0017]). In accordance with this definition, the master control tag, in the update operation mode, is an RFID reader.
4. Accordingly, D7 discloses an RFID reader update system comprising a server (named computer system 120, see D7, column 11, lines 59-62) which is operable to provide an RFID reader update via a communication network. It comprises an RFID reader (the master control tag), which comprises a near field communication interface (Fig. 2B, RF interface 203). It further comprises a portable update device (reader 100), operable to receive the RFID reader update via the communication network and to transfer the RFID reader update to the RFID reader via the near field communication interface (column 11, lines 50-64). The RFID reader update includes instructions (the order to modify the instruction set stored in the master control tag). Storing a modified instruction set changes the function of the RFID reader, so that it provides a different instruction set after the update than before.
5. The proprietor argued that the skilled person would not have envisaged such an interpretation of the term *reader*. Rather, in the skilled person's understanding and in the meaning of the word, a reader was a component that initiated communication. The master control tag, in D7, would be understood only as a component to be accessed for reading out data.
6. This is not persuasive. The broad definition of a reader in paragraph [0017] of the patent does not rely

on initiation of a communication, but only on the capability for wireless communication and the implementation of a "particular", but unspecified, function. Therefore, the master control tag in D7 falls within this broad definition, when considering its function in the update operation mode.

7. To conclude, the system as defined in claim 1 is anticipated by D7. The ground for opposition of lack of novelty (Articles 100 (a) and 54 EPC) prejudices the maintenance of the patent in the form of the main request.

Auxiliary request 1, claim 1, novelty

8. The definition of the communication network as a *wireless communication network* does not further distinguish the claimed system over D7. In D7, communication between the reader and the computer system is wireless, via a transceiver 118 and an antenna 116 (as shown in Figure 1).
9. Further, the feature that the RFID reader is *operable to detect portable update devices within a communication distance of the RFID reader* only describes the ordinary way RFID communication operates. It does not further distinguish the claimed system either. The proprietor did not contest this point.
10. The ground for opposition of lack of novelty (Articles 100 (a) and 54 EPC) prejudices the maintenance of the patent in the version according to auxiliary request 1.

Auxiliary request 2, claim 1, novelty

11. The feature that the portable update device remotely connects to the communication network to receive the RFID reader update via the communication network only expresses that the update device is not at the same location as the source of the update information. In D7, this feature is implicit, since the computer system 120, communicating with the reader for transferring the updating instruction set implicitly imposes a remote connection (D7, Figure 1). Therefore, this feature does not further distinguish the claimed system from D7. The proprietor did not contest this point.

12. The ground for opposition of lack of novelty (Article 100 (a) and 54 EPC) prejudices the maintenance of the patent in the version according to auxiliary request 2.

Auxiliary request 3, claim 1, inventive step

13. D7 does not disclose a cellular phone as the portable update device. The skilled person, starting from D7 and faced with the problem of providing a suitable portable device able to relay information between the computer network and the master control tag, would have consulted D1, which discloses the use of a cellular telephone for interacting with an RFID device and using information it receives via the cellular communication system. The skilled person, taking into consideration D1, would have recognised that a cellular phone was a suitable implementation of the portable update device in D7. The proprietor did also not contest this point.

14. The ground for opposition of lack of inventive step (Article 100 (a) and 56 EPC) prejudices the maintenance of the patent in the version of auxiliary request 3.

Auxiliary request 4, claim 1, clarity

15. In claim 1, the feature that the RFID reader is able to receive information from a credential at a new frequency was introduced. It must be examined whether this introduces a non-compliance under Article 84 EPC.
16. The meaning of "new frequency" is obscure, as the claim does not define a signal to which this frequency applies. In the context of RFID-communication, a frequency might be a parameter of the electromagnetic field; however, it might equally be a parameter of communication, related to the rate at which symbols are exchanged; it might be also any of a wide variety of other things.
17. The proprietor argued that this feature was explained in the application as filed, in paragraphs [0009], [0031], and [0049].
18. These passages, cited by the proprietor, use substantially similar wording. They do not help with understanding the meaning of *frequency*, but it cannot be left open to speculation.
19. Therefore, the amendment in question introduced a lack of clarity and, therefore, a non-compliance with Article 84 EPC. Irrespective of whether auxiliary request 4 has to be considered at all, as being filed late, it is not allowable so that the patent cannot be maintained on the basis of auxiliary request 4.

D13 and auxiliary requests 5-8, admissibility

20. D13 was submitted with the opponent's notice of appeal. It does not add anything over the documents already on file, and thus needs no further consideration.
21. Auxiliary requests 5-8 were submitted with the proprietor's reply to the appeal, as a response to the newly filed document D13. Since D13 is not taken into consideration, there is no reason to consider these requests.

Conclusion

22. Since there is no request, on the basis of which the it can be maintained, the patent must be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



D. Meyfarth

P. Scriven

Decision electronically authenticated