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**Datasheet for the decision
of 10 October 2022**

Case Number: T 1484/20 - 3.5.05

Application Number: 11156958.8

Publication Number: 2381379

IPC: G06F19/00

Language of the proceedings: EN

Title of invention:

System, apparatus and method for auto-replenishment and monitoring of a medical instrument

Applicant:

Sysmex Corporation

Headword:

Suggested order generator/SYSMEX

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (no)

Decisions cited:

T 2192/08, T 0835/10, T 2488/11



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Case Number: T 1484/20 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 10 October 2022

Appellant: Sysmex Corporation
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Kobe-shi, Hyogo 651-0073 (JP)

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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 30 January 2020
refusing European patent application No.
11156958.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: E. Konak
K. Kerber-Zubrzycka

Summary of Facts and Submissions

I. The appeal is against the examining division's decision to refuse the application. The examining division decided that the main (sole) request did not involve an inventive step (Article 56 EPC).

II. The contested decision makes reference to the following documents:

D1: EP 2 022 737 A1

D2: EP 1 231 471 A2

III. With the statement setting out the grounds of appeal, the appellant filed a main request, which corresponds to the main request on which the contested decision is based except for a correction. It requested that the decision be set aside and that a patent be granted on the basis of this request. It further requested oral proceedings as an auxiliary measure.

IV. In a communication pursuant to Article 15(1) RPBA 2020, the board raised objections under Article 56 EPC.

V. Oral proceedings were held before the board.

VI. Claim 1 of the sole request reads as follows:

"A replenishment center connected to a plurality of analyzer systems each comprising at least one analyzer module which performs analysis using a replenishable item, comprises:

a receiver configured to receive operation information from at least one of the plurality of

analyzer systems, wherein the operation information relates to utilization of the replenishable item;

a database configured to record the operation information in relation to the at least one of the plurality of analyzer systems;

an inventory calculator configured to calculate and store in the database a remaining quantity of inventory of the replenishable item kept for the at least one of the plurality of analyzer systems, based on the operation information recorded in the database; and

a suggested order generator configured to generate, when the calculated remaining quantity becomes less than a predetermined threshold, a suggested order programmed to give a user of the at least one of the plurality of analyzer systems an option of accepting or rejecting the suggested order,

wherein the replenishable item comprises a reagent utilized by the at least one analyzer module to perform a medical diagnostic analysis,

wherein the suggested order is further programmed to give the user of the at least one of the plurality of analyzer systems an option of modifying the suggested order,

wherein the suggested order comprises a recommended quantity of the replenishable item to be ordered, and

wherein the suggested order is processed and completed."

Reasons for the Decision

1. The appellant considers the following features of claim 1 to be new over D2:

a suggested order generator configured to generate, when the calculated remaining quantity becomes less than a predetermined threshold, a suggested order

programmed to give a user of the at least one of the plurality of analyzer systems an option of accepting or rejecting the suggested order,

the suggested order is further programmed to give the user of the at least one of the plurality of analyzer systems an option of modifying the suggested order,

the suggested order comprises a recommended quantity of the replenishable item to be ordered.

2. The examining division saw no technical effect arising from these distinguishing features. The appellant contested this finding, and argued that they have a technical effect and solve the objective technical problem of ensuring the proper functioning of the analyser in D2 by ensuring a constant supply of reagents. The board does not agree with the appellant and sees no prejudicial error in the conclusion reached in the contested decision. As the examining division rightly observed, the distinguishing features, namely suggesting an order to a user and letting them modify the order as they wish, are steps of a business method, which do not contribute to the technical character of the invention. Stock management is a non-technical business problem (see T 2488/11, points 1.3.1(ii) and 1.4(ii) of the Reasons). As stated by the board in T 2488/11, the fact that stock management is carried out in a laboratory setting does not change this, in particular a laboratory clerk re-ordering reagents does not perform any technical task.

The appellant argued that the features relating to stock management in T 2488/11 were quite general. The case at hand had more details regarding how the suggested order was generated. Furthermore, it had to

be taken into account that the re-ordered reagents were used to perform medical diagnostic analysis. Therefore the re-ordering of reagents in the case at hand did indeed involve technical considerations with implications for reliable diagnosis and human health, and should be regarded as a technical task. The presentation of the automatically generated suggested order assisted the user in performing this technical task. However, giving more details of an intrinsically non-technical task, namely making an order, does not make it technical and the type of item ordered is of no relevance in assessing the contribution to the technical character of the invention.

3. The appellant gave T 2192/08 as an example in which stock-keeping in a printer was acknowledged as a technical problem. In T 2192/08, the board acknowledged a technical problem in addressing an erroneously decremented cartridge count due to a specific problem, namely a user removing an empty cartridge from a printer, then shaking it and putting it back, rather than replacing it with a new one (see T 2192/08, points 1 to 3 of the Reasons). There is no statement in T 2192/08 that stock management either in printers or in general is technical. Thus the board cannot see the relevance of this decision to the case at hand.
4. Furthermore, leaving aside the issue of whether stock management is technical or not, the subject-matter of claim 1 would also not involve an inventive step in view of the case law regarding the lack of inventive step in mere automation or de-automation of prior-art methods.
 - 4.1 The appellant emphasised that the distinguishing features over D2 generated the suggested order

automatically. It is however established case law that the mere automation of functions previously performed by human operators does not involve an inventive step (see Case Law of the Boards of Appeal of the European Patent Office, Tenth Edition, July 2022, I.D.9.21.6). In D2, it is the human operator who generates the order (see D2, paragraph [0031]) based on analysis information and supply information provided from an information centre 11. Automating this does not involve an inventive step.

The appellant argued that a non-inventive automation starting from D2 would not stop with suggesting an order but lead to fully automated re-ordering of reagents: in other words it would not involve presenting a suggested order to the user such that they could modify the suggestion. However, the board cannot follow how a partial automation might be regarded as inventive in the absence of an inventive step in full automation.

- 4.2 The lack of inventive step in claim 1 could also be demonstrated starting from a fully automated method. The appellant does not contest that systems generating orders to replenish reagents in a fully automated manner were known at the priority date of the application. D1 does indeed disclose such a system. The appellant identified the lack of control in such systems as a problem (see also the application, paragraph [0006] of the description). The apparatus according to claim 1 differs from such a system in that a user is given the option to intervene, namely can accept, reject or modify an automatically generated order. However, this amounts to de-automation of certain steps of a fully automatic prior-art method. De-automating or undoing the automation in a prior-art

method cannot in general be considered to be inventive (see T 835/10, points 5.1.8 and 5.1.9 of the Reasons). The appellant argued that D1 taught away from increasing user involvement in its fully automated method. However, regardless of the degree of automation preferred in D1, the problems identified by the appellant in a fully automated method (i.e. lack of control, inaccuracy in special circumstances) are obvious disadvantages of full automation, and the suggested solution (user intervention via a GUI) is obvious in view of the trade-off between the advantages and disadvantages of different degrees of automation.

5. Therefore the subject-matter of claim 1 does not involve any inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated