

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 14 February 2024**

Case Number: T 0508/21 - 3.4.02

Application Number: 17153416.7

Publication Number: 3211613

IPC: G08B13/08

Language of the proceedings: EN

Title of invention:

Door and Window Contact System and Method that Include a MEMS Accelerometer and a MEMS Magnetometer

Patent Proprietor:

Honeywell International Inc.

Opponent:

GEZE GmbH

Headword:

MEMS door and window contact system/HONEYWELL

Relevant legal provisions:

EPC R. 99(2)

Decision of the President of the European Patent Office dated 9 May 2018 concerning the electronic filing of documents (OJ

EPO 2018, A45), Art. 12(1)

EPC Art. 100(c), 123(2)

Keyword:

Amendments - added subject-matter (yes)



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 0508/21 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 14 February 2024

Appellant: Honeywell International Inc.
(Patent Proprietor) P.O. Box 377
Intellectual Property-Patent Services
115 Tabor Road M/S 4D3
Morris Plains, NJ 07950 (US)

Representative: Houghton, Mark Phillip
Patent Outsourcing Limited
1 King Street
Bakewell, Derbyshire DE45 1DZ (GB)

Appellant: GEZE GmbH
(Opponent) Reinhold-Vöster-Straße 21-29
71229 Leonberg (DE)

Representative: Manitz Finsterwald
Patent- und Rechtsanwaltpartnerschaft mbB
Martin-Greif-Straße 1
80336 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
9 March 2021 concerning maintenance of the
European Patent No. 3211613 in amended form.**

Composition of the Board:

Chairman R. Bekkering
Members: F. Giesen
C. Almberg

Summary of Facts and Submissions

- I. The appeals by the patent proprietor and the opponent are directed against the decision of the opposition division dated 9 March 2021, with which European patent No 3 211 613 ("opposed patent") was maintained in amended form on the basis of the first auxiliary request.
- II. The proprietor's statement of the grounds of appeal was filed on 19 July 2021 by online filing. It was truncated after page 9. On 31 August 2021, that is after the lapse of the time limit pursuant to Article 108 EPC for filing a statement of grounds of appeal, the proprietor filed the complete statement of grounds of appeal including the missing pages 10 to 12.
- III. The written requests of the parties are as follows:

The proprietor requests

as a main request that the decision under appeal be set aside and that the patent be maintained on the basis of the claims as granted and re-filed on 19 July 2021 and the description as granted (i.e. that the opposition be rejected), or

as auxiliary requests, that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the claims of one of the first to third auxiliary requests and the corresponding description filed on 19 July 2021.

The request to maintain the patent on the basis of the claims of the first auxiliary request corresponds to a dismissal of the opponent's appeal.

The proprietor furthermore gave notice that in the event that a dependent claim of a request adds matter then that request minus the relevant claim(s) is submitted as a further Auxiliary Request.

The board notes that the requests of the proprietor were formulated differently. The board informed the parties in a communication pursuant to Article 15(1) RPBA that it interpreted the request of the proprietor along the above lines. The patent proprietor did not comment on this interpretation in their letter dated 29 January 2024.

The opponent requests

as a main request that the decision under appeal be set aside and that the patent be revoked, or

as an auxiliary request, that the proprietor's appeal be dismissed.

IV. Initially both parties requested oral proceedings.

The board informed the parties in a communication pursuant to Article 15(1) RPBA issued 14 November 2023 of the preliminary opinion that it considered the appeal by the proprietor to be admissible. However, it considered that, *inter alia*, all requests appeared to contain added subject-matter going beyond the content of the application as originally filed, and that a

revocation of the patent was a likely outcome of the appeal proceedings.

- V. Neither the proprietor nor the opponent replied in substance to the above communication. However, by letter dated 29 January 2024, the proprietor informed the board as follows:

"In response to the summons of 14 November 2023, we hereby notify the Board of Appeal that the proprietor will not be represented at the hearing and it is requested that, if the hearing takes place it be conducted on the basis of the current state of the file. The proprietor [sic] request for a hearing is withdrawn."

The board then cancelled the oral proceedings.

- VI. Claim 1 of the main request (claim 1 as granted) reads as follows (adopting the feature labelling from point 9 of the Facts and Submissions of the decision under appeal):

"A system (100) comprising:

- 1.1 a MEMS accelerometer (110) for mounting in or on a first portion of a window unit or a door unit;*
- 1.2 a MEMS magnetometer (115) for mounting in or on the first portion of the window unit or the door unit; and*
- 1.3 a microcontroller unit (120) in communication with each of the MEMS accelerometer and the MEMS magnetometer,*

- 1.4 *wherein the MEMS accelerometer is operable to measure an acceleration or vibration value relative to a second portion (300) of the window unit or the door unit and transmit the acceleration or vibration value to the microcontroller unit,*
- 1.5 *wherein the MEMS magnetometer is operable to measure a magnetic field value relative to a sensor magnet (310) mounted on or embedded in the second portion of the window unit or the door unit and transmit the magnetic field value to the microcontroller unit,*
- 1.6 *wherein the microcontroller unit is configured to receive user input determining one of a plurality of preconfigured signal analysis algorithms to the MEMS accelerometer and the MEMS magnetometer for use in making a security determination, and*
- 1.7 *wherein the microcontroller unit is configured to use the acceleration or vibration value and the magnetic field value as inputs into the determined one of the plurality of preconfigured signal analysis algorithms to make the security determination."*

VII. Claim 1 of the first auxiliary request has, in addition to the features of claim 1 of the main request, the feature

"wherein the security determination is indicative of an attempt to defeat event occurring"

after feature 1.7.

VIII. Claim 1 of the second auxiliary request has, in addition to the features of claim 1 of the first auxiliary request, the feature

"wherein magnetometer [sic] is a 3-axis magnetometer and the system is configured to determine [sic] magnitude of magnetic flux of at least two axes is below a predetermined reference value or expected value, and is further configured to determine that a non-sensor magnet is likely near the sensor circuit and that the attempt to defeat event may be occurring"

at the end of the claim.

- IX. Claim 1 of the third auxiliary request has, in addition to the features of claim 1 of the second auxiliary request, the feature

"wherein, the magnitude of acceleration or vibration detected on the axes or vectors of the accelerometer is used to confirm any attempt to defeat event identified by the output of the magnetometer"

at the end of the claim.

Reasons for the Decision

1. *Admissibility of the appeals*

1.1 The opponent's appeal complies with the requirements of Article 106 to 108 EPC and Rule 99 EPC. It is therefore admissible.

1.2 The appeal of the proprietor is also admissible.

1.3 It is established case law that the admissibility of the appeal can be examined ex officio, see Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022 ("Case Law"), V.A.2.7.

1.4 The statement of grounds of appeal of the proprietor was filed on 19 July 2021 by online filing. It was truncated after page 9. It was only after the lapse of the time limit pursuant to Article 108 EPC for filing a statement of grounds of appeal that the proprietor filed the complete statement of grounds of appeal including the missing pages 10 to 12.

1.5 According to Article 12(1) of the Decision of the President of the European Patent Office dated 9 May 2018 concerning the electronic filing of documents (OJ EPO 2018, A45), which was in force at the time of filing of the proprietor's statement of grounds,

"Where a filed document is illegible or incomplete, that part of it which is illegible or missing will be deemed not to have been received."

Therefore, and because the complete statement was filed after the lapse of the respective time limit, the

truncated statement of grounds of appeal dated 19 July 2021 is the basis for examining the admissibility of the proprietor's appeal.

- 1.6 The grounds for the decision under appeal were that the subject-matter of claim 1 of the main request (viz. the claim 1 as granted) lacked an inventive step in view of document D1 and common general knowledge. It becomes apparent from pages 4 to 9 of the truncated statement of grounds of appeal that the proprietor argues that the opposition division did not take into account all distinguishing features because erroneously (in the proprietor's view) they did not consider feature 1.7 (according to the feature labelling in the decision under appeal) to be a distinguishing feature.

The argument that the opposition division did not take into account all distinguishing features is potentially sufficient to overturn the appealed decision.

Therefore, the proprietor's truncated statement of grounds of appeal meets the requirement of Rule 99(2) EPC that it shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended. In the context of the examination of the main request the proprietor only has to demonstrate that the ground for opposition raised by the opponent does not prejudice the maintenance of the opposed patent, rather than to "positively" demonstrate that the subject-matter of claim 1 as granted involves an inventive step.

- 1.7 It follows that the statement of grounds of appeal of the proprietor also meets the requirements of Article 106 to 108 EPC, and in particular also those of Rule 99 EPC.

2. *Admittance of the remainder of the proprietor's statement of grounds filed on 31 August 2021*

The remainder of the proprietor's statement of grounds of appeal, i.e. pages 10 to 12, was filed on 31 August 2021, that is about six weeks after the lapse of the time limit pursuant to Article 108 EPC for filing a statement of grounds of appeal. The admittance of pages 10 to 12 is therefore at the board's discretion (Article 12(3) and (5) RPBA).

The delay in filing was small. The missing pages 10 to 12 were also filed about three months before the opponent filed their reply, and before the board started examination of the case. Under these circumstances, admitting pages 10 to 12 did not negatively affect procedural economy. Not admitting them would have been disproportionate.

For these reasons, the board admitted pages 10 to 12 filed on 31 August 2021.

3. *Decision in the written proceedings*

The proprietor withdrew their request for oral proceedings. The opponent's request for oral proceedings was conditional on the event that the board was not minded to set aside the decision under appeal and revoke the opposed patent. This condition is not met. The board also does not find holding oral proceedings on its own motion to be expedient (Article 116(1) EPC). The parties have had the opportunity to present their comments on the grounds for this decision (Article 113(1) EPC), and the time limit for replies to

the statement of grounds of appeal of the respective other party have expired. Thus, the decision is handed down in the written proceedings (Article 12(8) RPBA).

4. *Main request - Ground for opposition pursuant to Article 100(c) EPC*

4.1 Claim 1 of the main request (i.e. as granted) contains subject-matter extending beyond the content of the application documents as originally filed. The ground for opposition pursuant to Article 100(c) EPC therefore prejudices the maintenance of the opposed patent as granted.

4.2 Feature 1.6 reads:

"wherein the microcontroller unit is configured to receive user input determining one of a plurality of preconfigured signal analysis algorithms to the MEMS accelerometer and the MEMS magnetometer for use in making a security determination"

4.3 The opponent argues in point 3.1.7 of their statement of grounds of appeal, correctly in the board's view, that according to this amended wording the user can directly select a preconfigured signal analysis algorithm.

The proprietor and the opposition division consider paragraphs [0012] and [0028] of the application to be an original disclosure of the amended subject-matter.

Here and in the following, references are to paragraphs of the application documents as originally filed.

4.4 However, paragraph [0012] discloses that

"[f]or example, in some embodiments the microcontroller unit can execute a plurality of different signal analysis algorithms and can determine which one of the plurality of algorithms to execute based on received user input or based on detected events."

This means that the user does not directly select the signal analysis algorithm to be used, but that the microcontroller determines the appropriate signal analysis algorithm based on the user input. The paragraph goes on to state that

"[i]ndeed, in some embodiments, the user input can specify whether a monitored window or door is to be monitored in an open, closed or partially open position, and the microcontroller unit can execute the appropriate signal analysis algorithm based on such input."

This means that the user inputs specifies a position in which a door or window is to be monitored, and on the basis of this input of a position, the microcontroller determines the signal analysis algorithm to be used. This paragraph does not disclose that the user input specifies a signal analysis algorithm that is to be used by the microcontroller. A skilled person would also not interpret the preceding passage in this way. Intruder alarms are essentially consumer products. Neither the end user, nor even service personnel, are likely to have knowledge of the internal signal analysis algorithms, which are to be used in certain situations.

Paragraph [0028] essentially re-iterates the content of paragraph [0012], stating that

"[f]or example, in some embodiments, the user input can specify the allowed range of movement for the relevant window or door and/or specify whether the relevant window or door is to be monitored in a closed, open, or partially opened or closed position or state. The microcontroller unit 120 can use the received user input when making a security determination as described above. Additionally or alternatively, the microcontroller unit 120 can use the received user input to determine an appropriate algorithm to execute when analyzing the received signals to make a security determination as described above."

This passage states even more clearly, that a user input specifies an allowed range of movement or a position in which the door or window is to be monitored, rather than a signal algorithm directly. It is the microcontroller which takes the user input to select the signal analysis algorithm.

The board notes that even if the wording of the amended feature does not explicitly state that the user input specifies a signal analysis algorithm directly, but allows for the selection of the signal analysis algorithm to be indirect, the wording clearly covers the former possibility. In fact, the proprietor's argument concerning inventive step on page 10, second paragraph, first sentence of the (complete) statement of grounds of appeal clearly reflects the interpretation that the user can directly specify the signal analysis algorithm.

4.5 The respective reasons in the appealed decision on pages 9 and 10 do not persuade the board. As explained above, the amendment does not concern a linguistic issue. Rather it relates to new technical information that was not originally disclosed. The further argument that the above reading contradicted paragraph [0028] is also not convincing. This passage contains in essence the same information as paragraph [0012] and confirms that the user cannot directly select the signal analysis algorithm. The opposition division further appears to argue that feature 1.6 had to be interpreted so as to be in line with the wording of paragraph [0012]. However, this is not the right approach to examining compliance with the requirements of Articles 100(c) or 123(2) EPC. Rather, it must be concluded that the amended claim wording covers subject-matter that was not originally disclosed.

5. *Auxiliary requests 1 to 3 - Amendments*

Claim 1 according to auxiliary requests 1 to 3 does not meet the requirements of Article 123(2) EPC for the same reasons as claim 1 of the main request. The additional features according to these auxiliary requests do not change the meaning of feature 1.6 and are therefore not suitable to remedy the issue of added subject-matter.

6. *Further request of the proprietor*

The further request of the proprietor was conditional on the event that a dependent claim contains added subject-matter. This condition was not met. Therefore

the board did not have to deal with this request further.

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



L. Gabor

R. Bekkering

Decision electronically authenticated