

Internal distribution code:

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

D E C I S I O N
of 7 February 2006

Case Number: T 1158/02 - 3.5.01

Application Number: 97305153.5

Publication Number: 0890907

IPC: G06F 17/30, H04L 29/06,
H04B 7/185

Language of the proceedings: EN

Title of invention:
Providing web access to users in a vehicle

Patentee:
ICO Services Ltd.

Opponent:
DaimlerChrysler AG

Headword:
Vehicle web access/ICO SERVICES

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (no) "

Decisions cited:
T 0331/87

Catchword:
-



Case Number: T 1158/02 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 7 February 2006

Appellant: DaimlerChrysler AG
(Opponent) Epplestr. 225
D-70567 Stuttgart (DE)

Representative: -

Respondent: ICO Services Ltd.
(Proprietor of the patent) 1 Queen Caroline Street
London W6 9BN (GB)

Representative: Read, Matthew Charles
Venner Shipley LLP
20 Little Britain
London EC1A 7DH (GB)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 1 October 2002
rejecting the opposition filed against European
patent No. 0890907 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: S. Steinbrener
Members: R. Wibergh
A. Pignatelli

Summary of Facts and Submissions

- I. This is an appeal against the decision of the opposition division to reject the opposition against European Patent No. 0 890 907.
- II. The following documents will be referred to in the present decision:
- E12-WP: A. Jameel et al., "Internet Multimedia on Wheels", Daimler Benz white paper, Media Briefing, Palo Alto, CA, April 30, 1997
- E24: DE-U-296 08 032.
- III. The opposition was filed against the patent as a whole and based on Article 100(a) EPC. The Opposition division held that that the invention involved an inventive step with respect to the closest prior art, taken to be either E12-WP or E24.
- IV. The notice of appeal, in which the appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked in its entirety, was received on 21 November 2002. The appeal fee was paid on the same day, and the statement setting out the grounds of appeal was received on 5 February 2003.
- V. By letter dated 5 November 2003, the respondent (patent proprietor) argued that the patent was valid in its present form.

VI. By communication dated 18 August 2005, the Board summoned the parties to oral proceedings. Various observations concerning inventive step were made on the independent claims, citing in particular documents E12-WP and E24.

VII. In reply to the Board's communication, the respondent requested by letter dated 9 January 2006 that the appeal be dismissed and the patent be maintained on the basis of amended claims according to a main request or two auxiliary requests.

VIII. Independent claims 12 and 1 according to the respondent's *main request* read:

"12. A passenger vehicle (1) provided with access to a web, the vehicle being provided with:
a proxy server (10),
a local network (9, TI-Tn) within the vehicle to provide access to the proxy server for passengers in the vehicle,
a transceiver (11) for providing a wireless link (2,3) from the proxy server to the web for use whilst the vehicle is in motion, and
an input connection (13,14) to permit the downloading into the proxy server prior to a journey, of pre-selected webpages for access by the passengers during the journey in the vehicle."

"1. A method of providing web access to a plurality of users (UT1-UTn) in a vehicle (1), wherein the vehicle is provided with a web server (10) for communication with the users, and means (11,12) for providing a wireless link (2,3) from the server to the web for use whilst the vehicle is in motion, the method comprising downloading

into the web server in the vehicle, whilst it is stationary, at least one pre-selected web page to be accessed by the users during a journey in the vehicle."

IX. Claim 12 according to the *first auxiliary request* specified that the wireless link was a "*first link*" and that downloading into the proxy server through the input connection was permitted "through a *second link*".

X. Claim 12 according to the *second auxiliary request* further specified that the second link was "*wired*". Thus, this claim read:

"12. A passenger vehicle (1) provided with access to a web, the vehicle being provided with:
a proxy server (10),
a local network (9, TI-Tn) within the vehicle to provide access to the proxy server for passengers in the vehicle,
a transceiver (11) for providing a first, wireless link (2,3) from the proxy server to the web for use whilst the vehicle is in motion, and
an input connection (13,14) to permit the downloading into the proxy server through a second, wired link (13,14,15,18,20) prior to a journey, of pre-selected webpages for access by the passengers during the journey in the vehicle."

XI. Oral proceedings were held on 7 February 2006.

XII. The appellant argued essentially as follows:

Document E12-WP, concerning a car equipped with an Internet server, anticipated the subject-matter of claims 1 and 12 of the main request. The server, which

the skilled person would understand to be a proxy server, allowed web pages to be downloaded. The "input connection" in claim 12 could be identical with the preceding feature, the "transceiver". The feature "in motion" did not provide a technical contribution or effect because the wireless link could be used whether or not the car was moving.

Claim 12 of the first auxiliary request infringed the requirements of Article 123(2) EPC because the patent-in-suit disclosed exclusively a *wired* second link, a limitation not contained in the claim.

The subject-matter of claim 12 of the second auxiliary request was not inventive. Document E24 described a train provided with a local network connected via a central computer to the Internet over a wireless link. Starting out from this document, the skilled person would have thought of providing the network with an access to the World Wide Web in addition to the disclosed e-mail function. E24 already disclosed a floppy disc drive (implicit from figure 4) for downloading data into the computer. Since the disc drive would be connected to the computer via a cable it constituted an input connection through a second, wired link, suitable for downloading web pages.

XIII. The respondent argued essentially as follows:

Document E12-WP disclosed no web server in the sense of providing web pages to the outside. Nor did it disclose a proxy server or, since there would only be two or three persons in the car, suggest providing one. An input connection for downloading pre-selected webpages

into the server was also missing. Moreover, the document consisted largely of predictions and was clearly not wholly serious.

Document E24 neither disclosed a web server nor the downloading of information into the computer whilst the train was stationary for accessing during the journey. Web pages were nowhere mentioned. References to the Internet in E24 did not include an implicit disclosure of the World Wide Web. A web access was completely outside the scope of E24 and would for example require more antennas along the line than an e-mail service.

Claim 12 of the first auxiliary request did not infringe Article 123(2) EPC. The feature that the second link was a *wired* link was not initially disclosed as being essential, so that - pursuant to decision T 331/87 (OJ EPO 1991, 22) - there was no need for its inclusion in an independent claim. The link could for example be a Bluetooth connection.

As to the second auxiliary request it was noted that although the floppy disk shown in E24 might conceivably be regarded as a wired link, it was not disclosed as being suitable for transmitting web pages.

XIV. The appellant requested that the decision under appeal be set aside and the patent be revoked.

The respondent requested that the decision under appeal be set aside and the patent be maintained on the basis of claims 1 to 17 according to the main request or of the first auxiliary request or of the second auxiliary request, all filed with the letter dated 9 January 2006.

XV. At the end of the oral proceedings the Board announced its decision.

Reasons for the Decision

1. Admissibility of the appeal.

The appeal complies with the requirements referred to in Rule 65(1) EPC and is therefore admissible.

2. *The respondent's requests*

The different versions of independent claim 12 according to the respondent's three requests vary essentially only in the definition of the last feature, the "input connection". According to the second auxiliary request, the input connection is a *wired* link, a limitation not contained in the preceding requests. Since the Board has come to the conclusion that even with this limitation the invention according to claim 12 does not involve an inventive step, the present decision will only deal with the respondent's second auxiliary request.

3. *Claim 12 of the second auxiliary request: Inventive step*

3.1 Novelty not being in dispute, the Board will turn directly to the issue of inventive step.

3.2 The decision under appeal presents two lines of argumentation, one based on E12-WP and one based on E24. Both documents are relevant, but E24 appears to have the largest number of features in common with claim 12 of

the second auxiliary request. This document will therefore be taken as starting point.

3.3 E24 discloses a passenger vehicle having the following features:

- access to the Internet (see p. 16, l. 21),
- a central computer 40 having the function of an Internet server for e-mail (see figure 4; p. 10, l. 25; p. 16, l. 21),
- a local network (e.g. figure 4, "Datenbus 54"; p. 1, l. 21-25) within the vehicle to provide access to the central computer for passengers in the vehicle,
- a transceiver for providing a first, wireless link (figure 4, "Funkmodem 48") from the central computer to the Internet for use whilst the vehicle is in motion (p. 16, l. 22 "während einer Zugfahrt"), and
- an input connection (implicit, since a disk drive is required for the floppy disk 44; p. 16, l. 6-10) to permit the downloading into the central computer through a second, wired link (the floppy disk drive being a wired connection to the central server 40; this interpretation was not contested by the respondent, see point XIII above) prior to a journey (e.g. p. 11, l. 34), of pre-selected information for access by the passengers during the journey in the vehicle (e.g. p. 10, l. 35

onwards "Informationen über bestimmte Sehenswürdigkeiten").

3.4 The subject-matter of claim 12 is distinguished from the vehicle disclosed in E24 in that:

(a) the Internet connection provides *access to a web*,

(b) the central computer is a *proxy server*,

(c) the pre-selected information is in the form of *web pages* and downloaded into the *proxy server*.

3.5 The objective technical problem underlying these distinguishing features can be regarded as to improve the functionalities of the Internet connection whilst minimising the use of the (expensive) wireless capacity. These are general aims which the skilled person must be expected to pursue even without any express hints.

3.6 E24 mentions that the passengers can access the Internet for e-mail communication and the like (see p. 16, l. 21,22: "... Zugriff zum Internet, damit elektronische Post usw. vom Fahrsitz 1 aus während einer Zugfahrt erledigt werden kann"). It was well known to the person skilled in information technology before the filing date that the World Wide Web was a major feature of the Internet. This is mentioned in the patent-in-suit (e.g. in paragraph [0002]) and is also clear from E12-WP (stressing that "/t/he Internet is becoming more and more a part of our daily lives..." and "/w/e 'surf' the net just for fun", and referring to a "communications revolution", p. 2) as well as other documents cited in the proceedings. The passage in E24 cited above, and in

particular the term "usw." meaning "and the like", would therefore have strongly suggested a web connection to the skilled person.

The Opposition Division held that "at least once should the word 'Web' appear in the disclosure to hint the skilled person at loading Web-Pages" (decision, p. 7). The Board disagrees. The skilled person, being "aware of what /is/ common general knowledge in the art" ("Guidelines for Examination in the European Patent Office" C-IV, 9.3), needs no reminder of trends within his field of technology, and even less of "revolutions".

Thus, it was obvious for the skilled person to provide feature (a) above.

- 3.7 From the formulation of the technical problem above (point 3.5) it follows that the skilled person would have sought to adapt the system shown in E24 so that it provided a cost-effective connection to the World Wide Web. In paragraph [0004] of the description of the patent-in-suit it is acknowledged that proxy servers "have been developed for local area networks to provide a common gateway from the network to the Internet... which caches all the pages that have been accessed by the users on the network". Thus, using a proxy server as central computer in E24 did not require an inventive activity of the skilled person.

It follows that distinguishing feature (b) above was also an obvious addition to E24.

3.8 As to distinguishing feature (c), i.e. providing the pre-selected information in form of web pages, it is noted that E24 discloses providing the passengers with information related to the journey (see p. 10, l. 36), this information being stored on a record carrier (illustrated as a floppy disk 44). The information is pre-selected and provided before the journey, i.e. when the train is stationary, via a link which the Board considers to be within the scope of the term "wired" (see point 3.3 above). It is immediately apparent that a disc drive connection, independent of the wireless link, is a cheap method of providing information.

E24 suggests providing information about places of interest along the rail line. Such information can be found in books and brochures, which may well be what the authors of E24 had in mind. But with the advent of Internet, web pages as a source of information started to gain importance. Since storing web pages is not more difficult than storing any other information formats, it was inevitable that the skilled person would have thought about the possibility of storing such information on the floppy disk in the format HTML (HyperText Mark-up Language) used for web-pages and downloading it into the central computer as HTML documents.

Thus, the addition of feature (c) above was also obvious.

3.9 Even if each one of the features (a), (b) and (c) is an obvious modification of the system in E24, it could be argued that a non-obvious interrelationship exists between them. Indeed, the respondent has pointed out (cf. letter dated 5 November 2003, p. 8) that the central

computer described in E24, being at most an e-mail server, does not store web pages and therefore cannot perform the functions of a proxy server (i.e. caching retrieved web pages for further use). It would therefore not have been obvious to add a proxy server to E24.

The argument is thus that only the addition of the first feature opened up the possibility to add the second feature. It might be helpful to visualize the situation in the following way. The prior art document E24 is the starting point from which a path leads away. There are forks in the path, and only if the skilled person following the path takes the right turn in every fork will he arrive at the invention. Coming to the first fork he has to choose between providing a web access facility and not doing so. Without exercising inventive skill (see above) he takes the web access route. At a second crossroads he opts for a proxy server (again without exercising inventive skill). The point is now that if he had taken the wrong turn in the first fork he would not even have reached the second fork.

The Board recognizes that in some cases such a circumstance might render an invention non-obvious. If, for example, the addition of a first feature appears pointless or even disadvantageous in view of the closest prior art, and the feature's usefulness only becomes apparent in the light of a further added feature, then the interrelationship between these features is strong and the invention probably involves an inventive step. If, on the other hand, the first step is in itself clearly desirable, then further steps may well follow in a natural way. In the present case it has been established that the World Wide Web was well known at

the filing date. It can be assumed that the train passengers envisaged in E24 would appreciate being able to surf the Web in addition to sending e-mails. Thus, the initial step of providing a Web access was as such obvious. In this situation the skilled person was in practice *obliged* to consider what kind of central computer was required and, as already demonstrated, the proxy server was a conventional choice. Thus, and continuing the path analogy above, the skilled person had no difficulty in arriving at the invention because the path from the first fork *led him inevitably* to the second fork. The Board considers in fact that the skilled person is normally capable of adding any number of features to the prior art as long as they are known in themselves and have an expected interrelationship (or none at all).

Finally, according to distinguishing feature (c), the web pages are downloaded into the proxy server. Again, although E24 does not disclose a proxy server, the skilled person was *led* to this feature because of the choices he had previously made along the path.

3.10 Thus, since all the new claim features are obvious additions to the teaching of E24 and there is no non-obvious interrelationship between features, the subject-matter of claim 12 according to the respondent's second auxiliary request lacks an inventive step (Article 56 EPC).

4. *The respondent's main and first auxiliary requests*

Claim 12 according to the main and the first auxiliary requests being broader than according to the second

auxiliary request, the preceding argumentation applies to these claims *mutatis mutandis*. It follows that there is no need to consider the appellant's objection under Article 123(2) EPC with respect to the first auxiliary request (cf point XII above).

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:

P. Guidi

S. V. Steinbrener