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# Datasheet for the decision of 7 May 2008

**Case Number:** T 1207/06 - 3.4.02

**Application Number:** 95103967.6

**Publication Number:** 0672890

**IPC:** G01C 21/20

**Language of the proceedings:** EN

**Title of invention:**
Sight-seeing tour guide system

**Patentee:**
AISIN AW CO., LTD.

**Opponent:**
DaimlerChrysler AG

**Headword:**
-

**Relevant legal provisions:**
EPC Art. 54, 56

**Relevant legal provisions (EPC 1973):**
-

**Keyword:**
-

**Decisions cited:**
G 0009/92, G 0004/93, G 0004/95, T 0234/86, T 0506/91

**Catchword:**
-

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**Case Number:** T 1207/06 **-** 3.4.02

# D E C I S I O N
**of the Technical Board of Appeal 3.4.02**
**of 7 May 2008**

(Opponent) DaimlerChrysler AG
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**Decision under appeal:** **Interlocutory decision of the Opposition Division of the European Patent Office posted 22 May 2006 concerning maintenance of the European Patent No. 0672890 in amended form.**

**Composition of the Board:**

**Chairman:** A. Klein
**Members:** F. Maaswinkel
B. Müller

## Summary of Facts and Submissions

I. The appellant (proprietor of the patent) lodged an appeal, received on 1 August 2006, against the interlocutory decision of the opposition division, dispatched on 1 June 2006, on the amended form in which the European patent No. 0672890 (application No. 95103967.6) could be maintained. The fee for the appeal was paid on 1 August 2006. The statement setting out the grounds of appeal was received on 2 October 2006.

II. An opposition had been filed against the patent as a whole on the basis of Article 100(a) EPC 1973 on the grounds that the subject-matter of the patent was not patentable within the terms of Articles 52(1), 54 and 56 EPC 1973.

The opposition division held that the proprietor's main request including the claims of the patent as granted was not allowable since claim 1 did not meet the requirements of Articles 100(a) and 54 EPC 1973 in view of document D4 (EP-A-0 539 143). The division was furthermore of the opinion that the claims according to the first auxiliary request were allowable, for which opinion it considered document D6 (DE-A1-41 18 606) as disclosing the closest prior art.

III. With the letter setting out the grounds of appeal the appellant requested that the patent be maintained on the basis of the patent as granted or on the basis of claim 1 according to auxiliary request 1 or 2 filed with this letter. As a further auxiliary request it was requested to maintain the patent on the basis of the

set of claims considered allowable by the opposition division. Furthermore the patent proprietor filed an auxiliary request for oral proceedings.

IV. In response to a communication of the board annexed to the summons to oral proceedings, dated 8 February 2008, the appellant filed with a letter dated 7 April 2008 a new set of five auxiliary requests replacing the prior sets of claims of the requests filed with the grounds of appeal.

V. In a letter of 7 April 2008 the respondent's representative requested to admit in the oral proceedings a technical expert in the field of navigation devices, whose contributions at the oral proceedings would be made under the supervision and responsibility of the representative. The respondent (opponent) did not file any observations as to substance.

VI. Oral proceedings were held on 7 May 2008.

At the oral proceedings the appellant requested that the decision under appeal be set aside and that the patent be maintained as granted or, in the alternative, on the basis of one of auxiliary requests 1 to 5, filed with the letter of 7 April 2008.

The respondent requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

VII. The wording of claim 1 according to the main request (including the numbering of features "M1" to "M8" used by the parties) reads as follows:

" A guide system comprising:

M1 guide data storage means (3) stored with guide data relating to an object for guiding said object along a road or on a street or in an area;

M2 present position detecting means (5) for detecting and tracing a present position;

M3 reading means for reading out guide data from said guide data storage means (3);

M4 guide output means (6) for outputting the guide data relating to the object read out by said reading out means;

characterized by

M5 first search means (6a) for searching in a geographical range guide data relating to the object to be guided on the basis of the present position obtained by said present position detecting means (5);

M6 second search means (6b) for searching guide data relating to the object to be guided within a geographical range different from that of said first search means (6a);

M7 said reading out means is for reading out the guide data from said guide data storage means (3) searched either by said first search means (6a) or said second search means (6b); and

M8 means for issuing an instruction for a search operation by said second search means (6b)".

Claim 1 according to auxiliary request 1 differs from claim 1 according to the main request in that it is

cast in the one-part form (leaving out the expression "characterized by") and that it includes the following amendment in feature M6:

M6 "second search means (6b) for searching guide data relating to the object to be guided within a geographical range on the basis of the present position different from that of said first search means (6a);" (*emphasis added by the board*).

The wording of claim 1 according to auxiliary request 2 is as that of claim 1 according to auxiliary request 1 with the following amendments in feature M7:

M7 "said reading out means is for reading out the guide data from said guide data storage means (3) searched either by said first search means (6a) or said second search means (6b); wherein

said guide output means outputs an object list, wherein the extracted objects are listed up in the order closer to the present position, obtained by said present position detecting means (5), if a plurality of guidance objects are extracted; and".

The wording of claim 2 according to auxiliary request 2 is as that of claim 1 according to auxiliary request 1 with the following amendments in feature M7:

M7 said reading out means is for reading out the guide data from said guide data storage means (3) searched either by said first search means (6a) or said second search means (6b); wherein

in case a plurality of objects are searched, said guide output means (6) adds information of priority to the extracted objects, to guide and output the objects on the basis of the added priority information; and".

Claim 1 according to auxiliary request 3 is identical to claim 1 according to auxiliary request 2.

Claim 1 according to auxiliary request 4 is identical to claim 2 according to auxiliary request 2.

The claims according to auxiliary request 5 are identical to those allowed by the opposition division and therefore need not be reproduced for the purpose of the present decision.

VIII. The arguments of the appellant may be summarised as follows.

The opposition division had rejected claim 1 of the patent as granted under Article 54 EPC 1973 in view of document D4. The object underlying that document is a navigation system capable of easily providing the user with necessary information without the disadvantages of prior navigation systems in which all types of service facilities (restaurants, hotels etc) were always displayed with the full information. To this aim D4 discloses different embodiments in which either (i) specific types of facilities selected by the user are displayed or (ii) visual or acoustic output of limited or selected information regarding a specific facility is provided. Figure 5 of D4 shows the external appearance of input device 11 and display unit 13 as

well as of key switches K1 to K15. At the start-up of the device the initial map on the screen shows a map and the current position of the vehicle without indication of the position of facilities. With the key switches K5 to K9 the user can select the type of facilities to be displayed, e.g. pressing key switch K6 results in displaying "restaurants" and switch K7 "hotels". Upon activation of the device all these data have been loaded in the working memory and therefore pressing the key switches does not start a new search, this action only selects the type of data to be displayed. In the decision under appeal it was argued, referring to the passages in col. 2, l. 50 to col. 3, l. 25 and col. 11, l. 30 to 48, that key switch K10 of input device 11 in one of its two positions would result in a certain electronic hardware connection being made whereas, when this switch was in the other position, another hardware connection was being made. Therefrom, according to the opposition division, switch key K10 constituted distinct structural features of the "first and second search means" as defined in claim 1 of the main request. This view cannot be followed. In particular, see col. 11, l. 40 to 44, "by using the key switch K10 ...a display of a remote area other than the area in which the current position is located, is called by use of a keyword of a place name, and mark information or the like is displayed thereon". Hence, the operation of the key switch K10 results in the display of a remote area, which only involves a change of display and no new search is performed. The keys K14 and K15 of this input device 11 are used for scrolling the picture plane and therefore, similarly, only involve a change of the display for which no new search is performed since all data are already in the working

memory of the device. Therefore document D4 neither discloses nor renders obvious a first search or a second search or such means for guide data relating to the object to be guided. All that is disclosed in D4 is a change of the picture plane or displayed area either by scrolling or by shifting the display to a remote area, e.g. the area at a destination of a calculated route or at some other point of interest. Since neither D4 nor the further prior art discloses different searches to be performed within different geographical ranges the subject-matter of claim 1 of the patent as granted is novel and involves an inventive step.

Claim 1 according to the first auxiliary request contains the additional restriction "on the basis of the present position" in feature M6 defining the second search means. Support for this amendment may be found in, e.g., col. 4, l. 22 to 32; col. 11, l. 25 to 29; and col. 18, l. 11 et seq. of the patent specification and the corresponding passages in the original patent application. In line with the discussion of document D4 and the differences of claim 1 according to the main request to this document it is clear that D4 also fails to disclose or render obvious the performance of two independent searches for data in independent geographical ranges on the basis of the present position. In particular in col. 11, l. 41, document D4 explicitly discloses that by pressing key switch K10 a remote area other than the area in which the current position is located, is displayed.

Auxiliary request 2 contains two independent claims which is considered appropriate and reasonable in view of the proprietor's legitimate interest to achieve

protection for all subject-matter not affected by the objections raised during the opposition. Claim 1 includes an additional feature in feature M7, which is supported by claim 7 of the patent as granted and by the passage in col. 7, l. 47 to 50 of the patent specification; it is furthermore supported by col. 2, l. 41 to 47; col. 4, l. 36 to 40; col. 6, l. 3 to 6; col. 14, l. 31 to 35; and claims 2 to 5 of the patent as granted. Claim 2 of this request is based on claim 2 of the original patent application or claim 3 as granted. The outputting of the extracted objects in a list in the order closer to the present position, as defined in claim 1, and the adding of priority to the extracted objects, as defined in claim 2 according to this request, limits the amount of displayed information of search results to the user, thereby enhancing the display and the visibility and thus the operability of the guide system.

Claim 1 according to auxiliary request 3 is identical to claim 1 of auxiliary request 2; claim 1 according to request 4 is identical to claim 2 of auxiliary request 2. Therefore the claims according to these requests disclose patentable subject-matter for the same reasons as explained above.

The claims of auxiliary request 5 are identical to those as considered allowable in the interlocutory decision of the opposition division. According to the established Case Law and in particular Decisions G 9/92 and G 4/93 the non-appealing party cannot challenge maintenance of the patent as thus amended.

IX. At the oral proceedings the appellant put into question the admissibility of the presentation of submissions by the person accompanying the representative of the opponent, objecting that the accompanying person tried to present the entire opponent's case, which, according to Decision G 4/95, was not allowed. Following the appellant's objection, the accompanying person made only few additional submissions, and the appellant did not repeat the objection.

X. The arguments of the respondent may be summarised as follows.

The language of claim 1 according to the main request is vague, extremely broad and technically not precise: for instance, it is not clear whether the "object... for guiding said object" in feature M1 relates to the vehicle, as would follow from feature M2 and generally from the concept of a navigation system, or to any information about points of interest near the present position. Therefore it is not clear what is "guided". Also "first" and "second search means" in features M5 and M6 are only functionally defined. Finally feature M8 apparently only refers to the second search means, the first search means not being included, and is so general that it could read on any prior art navigation system. Therefore, even if the guide system according to the patent in suit would differ from the one known from document D4 such a difference is not expressed in the independent claim and the respondent completely agrees with the reasoning in point 4 of the decision that the subject-matter of claim 1 of the main request lacks novelty over document D4.

The amendment in claim 1 according to the first auxiliary request in feature M6 that the second search means (is) for searching ...on the basis of the present position" is not supported by the description (Art. 84 EPC 1973). For instance, the passage in col. 4, l. 24 discloses this feature only in the context of the feature that the search ranges "are switched and used according to the manual key operation of the control means 1". Similarly the expression in col. 11, l. 25 - 29, specifies that the object is searched "on the basis of the present position and the advancing direction". Apart from this objection the added feature does not render the subject-matter of this claim novel, since even if the key switch K10 is pressed for displaying a remote area (col. 11, l. 41) it is implicit that when selecting a remote area the navigation system must take the present position into account, otherwise the system could not work. Therefore the claimed device is not novel.

The appellant has argued that claim 1 of auxiliary request 2 is supported by claim 7 and col. 7, l. 47 to 50 of the patent as granted. However it appears that the claim does not include the expression from claim 7 "...to guide an output a designated object from said list", therefore the claim does not meet the requirements of Article 84 EPC 1973. Furthermore since the second independent claim 2 of this request is based on claim 3 of the patent as granted and claim 1 is based on claim 7 of the patent as granted it is questionable that the requirements of unity of invention (Art. 82 EPC 1973) are respected because the independent claims are not linked by a common inventive concept. As to the considerations of patentability, to

present the output in the form of an object list as defined in claim 1, for instance in the order closer to the present position is a feature well-known in navigation systems. In particular reference is made to document D6, disclosing a navigation system, in which in Figure 5A a list of objects (destinations) is shown in the order closer to the present position (for instance destinations at 0.5 km, 6 km and 52 km). Therefore the skilled person would routinely apply such a representation in a list in the system of D4 without an inventive step being involved. Furthermore, the additional feature of claim 2 according to auxiliary request 2, to add information of priority to the extracted objects in order to guide and output the objects on the basis of the added priority information, are known from document D4, where it is shown in Figure 13 and its accompanying description that the user can select the type of facilities (for instance, Japanese restaurants, Western restaurants) to be displayed on the screen according to his preference or priorities. Therefore the subject-matter of claim 2 according to auxiliary request 2 is not novel.

Claim 1 according to auxiliary request 3 and claim 1 of auxiliary request 4 are identical to, respectively, claims 1 and 2 of auxiliary request 2 and are therefore not allowable for the reasons given before.

With respect to auxiliary request 5 the appellant has argued that the claims allowed in the interlocutory decision could not be challenged by the opponent. With reference to the case law, see Case Law of the Boards of Appeal, 5th ed., VII.D.7.3.2 and Decisions T 234/86 and T 506/91, it would however appear that the opponent

was adversely affected by the decision of the opposition division. Therefore it should have the possibility to have the decision reviewed.

## Reasons for the Decision

1. The appeal is admissible.

2. *Oral submissions by an accompanying person*

2.1 At the oral proceedings the appellant questioned the admissibility of the presentation of submissions by the person accompanying the representative of the opponent, objecting that the accompanying person tried to present the entire opponent's case, which, according to Decision G 4/95, was not allowed.

2.2 According to this Decision, the following main criteria should be considered by the EPO when exercising its discretion to allow the making of oral submissions by an accompanying person in opposition or opposition appeal proceedings:

(i) The professional representative should request permission for such oral submissions to be made. The request should state the name and qualifications of the accompanying person, and should specify the subject-matter of the proposed oral submissions.

(ii) The request should be made sufficiently in advance of the oral proceedings so that all opposing parties are able properly to prepare themselves in relation to the proposed oral submissions.

(iii) A request which is made shortly before or at the oral proceedings should in the absence of exceptional circumstances be refused, unless each opposing party agrees to the making of the oral submissions requested.

(iv) The EPO should be satisfied that oral submissions by an accompanying person are made under the continuing responsibility and control of the professional representative.

2.3 With respect to criterion (i), the relevant data were included in the respondent's request of 7 April 2008 (see Section V supra). This request was filed one month before the oral proceedings, therefore, in the opinion of the board, criterion (ii) was equally fulfilled and no express request within the meaning of criterion (iii) was made.

With respect to criterion (iv), after an introduction of the respondent's representative at the oral proceedings concerning the claim language having regard to the field of navigation systems, the submissions of the accompanying person were largely restricted to explaining the interpretation of the technical terms of the claims and the corresponding features in the prior art. These submissions were made under the supervision and control of the professional representative, who also was in charge of forwarding its respective objections against the provisions of the EPC and who made the respondent's final requests (see Section X supra). In any case, subsequent to the objection, the accompanying person made only few additional submissions of a technical nature, equally under the supervision and control of the professional

representative. The appellant did not repeat the objection. Therefore the board is satisfied that in the present case the criteria in Decision G 4/95 are met.

3. *Main Request*

*Claim 1 - construction*

3.1.1 At the oral proceedings the respondent had objected that the language of claim 1 of the main request, i.e. claim 1 of the patent as granted, was vague, broad and technically not precise. Since objections against a granted claim under Article 84 EPC 1973 are not within the scope of opposition or opposition appeal proceedings, such objections cannot be considered for the allowability of such a claim. In return, if a claim does not meet the conditions of clarity and conciseness of Article 84 EPC 1973 the claim drafter may not rely on the further requirement of this Article that the claim "...is supported by the description", and that for the interpretation of the claimed subject-matter for the question of patentability always resort to the description may be found. Rather, for this issue such a claim may be given any reasonable and logically consistent interpretation.

3.1.2 Indeed it appears that some expressions in claim 1 do not have the accepted, commonly used meaning of the English language. For instance the expression "...for guiding said object" in feature M1 (equally in features M5 and M6: "object to be guided") would normally imply, that an object (person, vehicle) is being lead to a predetermined destination (here: "along a road or on a street or in an area"). However, in the present context

the verb "guiding" should rather be construed as "providing (any kind) of information" of an "object", which object may refer to any (still) item of interest along a road or on a street or in an area, but not a person or a vehicle. All information is stored in and retrieved from a "guide data storage means".

3.1.3 Furthermore, in feature M2 it is a priori not clear to which antecedent "a present position" refers. Apparently it is not the position of the object to be guided, but the position of an (undefined) user. Presumably, this "present position" is the same position referred to in feature M5.

3.1.4 In feature M5 the "first search means" are defined to search guide data relating to the object to be guided. To the board's understanding this "searching" implies retrieval of the data of interest "in a geographical range on the basis of the present position", wherein the positional relationship between the "geographical range" and the "present position" is only defined inasmuch as it is "on the basis of" the present position, which is not a strong restriction. Also, it is not specified in feature M5 (c.q. feature M6) where these data should be searched or retrieved, presumably it is in the guide data storage means, see feature M7.

3.1.5 In feature M6 it is not clear whether "the object to be guided" is the same object as the object in feature M5: this is in particular confusing, because, according to feature M6, the object should be in a geographical range different from that of the first search means (feature M5), therefore the antecedent appears erroneous.

3.1.6 Finally, feature M8 apparently relates to a means which may issue any instruction to the second search means for performing a search operation.

3.2 *Patentability*

3.2.1 Document D4 discloses a navigation system comprising a "guide" (i.e. an information storing and retrieving) system as defined in features M1 to M4 of claim 1, wherein these features are to be construed as set out in Section 3.1 supra. For the disclosure of these features in document D4 the opposition division referred in point 4 of its decision to the passage in col. 2, l. 50 to col. 3, l. 25, Figure 1, items 1 - 4 and 12. In fact it would appear that the features, defining the preamble of claim 1, are common to prior art navigation systems and their presence in the system of D4 was not controversial among the parties.

3.2.2 With respect to the "first" and "second search means" (features M5 and M6) the opposition division had identified the key switch K10 shown in Figure 5 of D4 which, with reference to col. 11, l. 40 - 48, could be in two different positions; wherein the reading out means (feature M7) was for reading out the guide data from the guide data storage means searched by either key position of switch K10; and which included means for issuing an instruction (feature M8), under reference to col. 11, l. 4 - 48 of D4. At the oral proceedings the respondent has concurred with this position.

3.2.3 The appellant has disagreed with this view of the opposition division. In particular the appellant has argued that upon activation of input device 11 in Figure 5 of D4 all data of interest (in D4 referred to as "facilities") are loaded in the working memory of the system; that pressing switches K6 or K7 only selects the type of facilities to be displayed; and that switching key switch K10 or scrolling keys K14 and K15 merely changes the display of the area, which data are, however, already in the working memory and do not require a further "search", in contrast to the system of the invention defined in claim 1.

3.2.4 The board does not concur with this interpretation of document D4. According to col. 9, starting at line 9, the system controller 5 calculates the current position data (corresponding to feature M2) and (line 22) searches the map display unit 53 related to the current position data, for example unit 53A. Then the relevant data is transferred to the buffer memory. Similarly in col. 10, starting at line 34, it is disclosed that if at the commencement of the control operation the key switch K6 is pressed the system controller drives the CD-ROM drive and transfers necessary information to the buffer memory. More particularly (col. 10, l. 42) "the system controller 5 searches the map display unit 53A related to the current position data, and identifies, by looking up the detailed data pointer 68, the address of the storage area of the CD-ROM disk DK in which restaurant data that is the detailed service data 80 is stored".

3.2.5 In the opinion of the board these passages clearly disclose that a "first search" is carried out in a

geographical range (here: in one of the pluralities of map display units 53A, which are related to the standard drawing sheet management piece 50A, see Figure 2 and col. 7, l. 5 - 7) relating to the "object to be guided" (here: a type of restaurant selected by pressing key switch K6) and on the basis of the current position (one of the maps 53A related to the current position, see col. 9, l. 23) which is obtained by the present position detecting means (see Figure 1: system controller 5 with sensors 1 - 4). Therefore feature M5 is known from document D4.

3.2.6 Figure 2 of this document shows the data structure on the CD-ROM disk DK, further explained in col. 6, starting at line 36. The drawing sheet management table 50 includes a standard drawing sheet management piece 50A, managing data on small-scale maps showing narrow areas and comprising a plurality of map display units 53A; furthermore a middle drawing sheet management piece 50B managing data on middle-scale maps showing middle areas and comprising a plurality of map display units 53B; and a top drawing sheet management piece 50C managing data on large-scale maps showing wide areas and comprising a plurality of map display units 53C. According to col. 3, l. 17 - 21, the plurality of map display units 53B and 53C are configured in the same manner as the map display units 53A.

3.2.7 Each of the small-scale map display units 53A only contains and can manage data in a narrow area. Therefore, if either the present position reaches the end of the area covered by the presently selected map, or if the user activates the key switches K14 and K15

for scrolling toward a next area, or if the user wishes information of a more remote area by activating key switch K10, necessarily such an operation involves a new search by the system controller 5 in the appropriate map display unit, which might be a different unit from the plurality of units 53A (for instance an adjacent unit, in case of scrolling through a further narrow area) or, equally one of the maps in units 53B (wider areas) or 53C (large area, for instance if key switch K10 is activated for displaying a remote area). This further retrieval of "guide data" (i.e. information of facilities) in a geographical range different from the present range in the system of D4 corresponds to feature M6 of claim 1. Finally features M7 (reading out and displaying the information data) and M8 (means for issuing the instruction for a further search, which correspond to key switches K10, K14 and K15) are equally part of the system of D4.

3.2.8 Therefore, having regard to the disclosure in document D4, the subject-matter of claim 1 according to the main request is not novel.

4. *First auxiliary Request*

4.1 Claim 1 of this request includes the additional condition in feature M6 that the second search means is "for searching guide data relating to the object to be guided within a geographical range on the basis of the present position different from that of the first search means". The board has noted that the respondent has objected to the amendment, as well as the amendments in the claims of the further auxiliary requests. However since, as will be understood from the

following, the board finds that the request is not allowable for other reasons, these objections will not be addressed here.

4.2 With reference to col. 11, l. 41 of document D4 the appellant has argued that, even if one would consider the key switch K10 as a generic "first" or "second" search means, the "second search" would in any case not search data within a geographical range on the basis of the present position, because this switch was merely for displaying a remote area other than the area in which the current position was located. The respondent has put forward the opinion that in any case, also if displaying a remote area, the present position must be taken into account by the navigation system.

4.3 With reference to col. 11, l. 34 to 37, it is observed that, when scrolling the picture planes by key switches K14 and K15, planes showing the periphery of the current position ...are scrolled. As explained before, in case the new information is not anymore available in the current small-scale map 53A showing narrow areas the system retrieves the adjacent map 53A on the CD-ROM and transfers the data to the buffer memory. As pointed out in Section 3.1.4, the expression "on the basis of the present position" is not a strong geographical restriction, rather it implies that the present position should, somehow, be taken into account. This condition is clearly met in the requirement that the new range should be at the periphery of the present position.

In addition, if the user in the system of D4 requests a display of a remote area but in a large scale display

(map display unit 53C) the large-scale display of this data is still "on the basis of the present position".

4.4 Therefore the features of claim 1 of this request are anticipated by document D4.

5. *Second auxiliary request*

5.1 *Claim 1*

5.1.1 Claim 1 of this request includes, additional to claim 1 of the first auxiliary request, the further requirement for the guide output means (feature M4) that this "...outputs an object list, wherein the extracted objects are listed up in the order closer to the present position, obtained by said present position detecting means (5), if a plurality of guidance objects are extracted". Therefore the extracted objects (facilities or general: data of interest) are listed according to the distance of the present position.

5.1.2 According to the respondent, this manner of displaying data (for instance: destinations) is quite common in navigation systems. In this respect the respondent made reference to Figure 5A of document D6. In this Figure at a crossing ("Toranomon crossing") the entire stored information (col. 6, l. 33) is shown, including a list of possible destinations and the respective distances in the sequence of increasing distance (e.g. Tameike 0.5km; Shibuya 6km; Atsugi 52km). In the opinion of the respondent, the skilled person in the field of navigation devices would consider implementing this kind of presentation in the order closer to the present position equally for the display of the navigation

system of document D4. The board finds this argument plausible, for instance if the user is interested in displaying possible locations of interest (restaurants, hotels) according to the distance from its present position.

5.1.3 Therefore the subject-matter of claim 1 of this request does not involve an inventive step.

5.2 *Claim 2*

5.2.1 Claim 2 of the second auxiliary request includes the additional restriction for the output means that "...in case a plurality of objects are searched, the guide output means adds information of priority to the extracted objects, to guide and output the objects on the basis of the added priority information".

5.2.2 With reference to Figure 13 of document D4 the respondent has argued that the system of document D4 already allows adding "information of priority" to the extracted objects. Indeed, according to col. 12, l. 56 - 58, the user selects a menu selection, by which desired items in the menu can be displayed (col. 13, l. 13). For instance, either art galleries or museums can be selected (col. 13, l. 9 - 10). In this case only information ("guide") of the objects on the basis of the added priority information (i.e. the selection criteria) is displayed.

5.2.3 The subject-matter of this claim is therefore not novel.

6. *Auxiliary requests 3 and 4*

6.1 Claim 1 according to auxiliary request 3 is identical to claim 1 according to auxiliary request 2.

6.2 Claim 1 according to auxiliary request 4 is identical to claim 2 according to auxiliary request 2.

6.3 Therefore, for the reasons given in point 5 above, these requests do not include patentable subject-matter.

7. *Auxiliary request 5*

7.1 In its communication annexed to the summons to oral proceedings, dated 8 February 2008, the board had explained that "According to this Request" (*i.e. the present 5th auxiliary request*) "...the patent should be maintained on the basis of the claims as held allowable by the opposition division. Since the patent proprietor is the sole appellant neither the board nor the respondent can challenge maintenance of the patent as amended (see Case Law of the Boards of Appeal, 5th Edition, VII.D.6.1)".

7.2 During the oral proceedings the respondent, referring to Section VII.D.7.3.2 and Decisions T 234/86 and T 506/91, argued that the respondent (opponent) was adversely affected by the interlocutory decision and that it should therefore have the possibility of having this decision reviewed.

7.3 It is correct that according to Section VII.D.7.3.2, which is entitled "Party adversely affected", and the cited Decisions the opponent was adversely affected by

the interlocutory decision, and that it could have filed an appeal. But by not having filed an appeal the Rulings of the Enlarged Board of Appeal in G 9/92 and G 4/93 apply, where it was concluded:

"If the patent proprietor is the sole appellant against an interlocutory decision maintaining a patent in amended form, neither the Board of Appeal nor the non-appealing opponent as a party to the proceedings as of right under Article 107, second sentence, EPC, may challenge the maintenance of the patent as amended in accordance with the interlocutory decision" (*G/9/92, Headnote 1*).

7.4 Therefore the board finds that the request of the respondent of reviewing the decision of the opposition division in this respect has no effect.

## Order

## For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

M. Kiehl A. G. Klein