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Datasheet for the decision of 19 June 2007

Case Number: T 1244/06 - 3.5.03

Application Number: 94914109.7

Publication Number: 0699361

IPC: G01C 21/00

Language of the proceedings: EN

Title of invention:
Method and apparatus for transmission of data using radio frequency signals

Patentee:
Cellport Systems, Inc.

Opponent:
SatMARS Navigations- und Kommunikationssysteme GmbH

Headword:
Transmission of data/CELLPORT SYSTEMS

Relevant legal provisions:
EPC Art. 56, 111(1)
RPBA Art. 10b

Keyword:
"Inventive step (main request) - no"
"Remittal (second auxiliary request) - no"
"Late-filed first and third auxiliary requests - not admitted"

Decisions cited:
-

Catchword:
-

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Case Number: T 1244/06 **-** 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 19 June 2007

Appellant: (Opponent)
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Decision under appeal:
Interlocutory decision of the opposition division of the European Patent Office posted 31 May 2006 concerning the maintenance of European Patent No. 0699361 in amended form.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
R. Menapace

Summary of Facts and Submissions

I. This appeal is against the decision of the opposition division finding European patent No. 0 699 361 in amended form to meet the requirements of the EPC.

II. Opposition was filed against the patent as a whole and on the grounds that the claimed subject-matter was not new and did not involve an inventive step (Article 100(a) EPC).

In support of its arguments the opponent referred, *inter alia*, to the following documents:

E1: EP 0 242 099 A; and

E2: EP 0 292 811 A.

III. Following oral proceedings, the opposition division held that the patent in amended form, including claim 1 as granted, met the requirements of the EPC. The opposition division particularly held that the method according to claim 1 involved an inventive step having regard to the disclosure of E1 or E2 and to a combination of these documents.

IV. The opponent (appellant) lodged an appeal against the decision and requested that the impugned decision be set aside and the patent be revoked in its entirety. In the statement of grounds of appeal the appellant submitted arguments in support of its assertion that the opposition division had interpreted claim 1 as granted too restrictively and in a way which was not supported by the patent specification; a less restrictive

interpretation would have rendered the claimed method open to an objection of lack of inventive step. The appellant conditionally requested oral proceedings.

V. In response to the statement of grounds of appeal, the respondent (proprietor) argued that the appellant had misinterpreted claim 1. The respondent implicitly requested that the appeal be dismissed. Oral proceedings were conditionally requested.

VI. The parties were summoned by the board to oral proceedings. In a communication accompanying the summons the board informed the parties that at the oral proceedings it would be necessary to discuss, *inter alia*, the interpretation of claim 1 and the question of whether or not its subject-matter involved an inventive step having regard to the disclosures of E1 and E2.

VII. In preparation for the oral proceedings the respondent made further submissions in support of its request that the appeal be dismissed. The respondent also filed three auxiliary requests.

VIII. Oral proceedings were held on 19 June 2007. In the course of the oral proceedings, the appellant withdrew all three auxiliary requests on file and submitted a set of claims of a new first auxiliary request.

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

The respondent requested that the appeal be dismissed (main request), or that the patent be maintained on the basis of claims 1 to 12 as filed during the oral

proceedings (first auxiliary request), or that the case be remitted to the department of first instance for further prosecution on the basis of these claims (second auxiliary request), or that the patent be maintained on the basis of a combination of claims 1 and 6 as granted (third auxiliary request).

At the end of the oral proceedings the board's decision was announced.

IX. Claim 1 as granted reads as follows:

"A method for transferring information relative to at least one remote source over a wireless radio network using a cellular radio telephone (10) outputting said information to a controller (200);
said controller transferring said information to at least a first peripheral device of a plurality of peripheral devices (284, 288, 292) that also include second and third peripheral devices,
said method being **characterised in that** said controller (200) being disposed on a vehicle and one of said peripheral devices including a Global Positioning System (GPS) receiver (284) providing digital information;
said information comprising first data from a remote source over the wireless radio network and also having control information related to identifying the peripheral device (284, 288, 292) that is to receive said digital information, said receiving step including the steps of:

- deciding whether said received signals contain voiceband or digital information;
- formatting said first data by a processor (208) of said controller (200) appropriately for said

peripheral device (284, 288, 292) to which said first data is addressed;

- sending said first data by said controller (200) to said first peripheral device, which was identified to receive said first data, using a common bus (280) with which at least one of said first second and third peripheral devices (284,288,292) communicates;
- generating by one peripheral device second data addressed to another peripheral device;

said second data being placed on the bus and once the data is present on the bus at least one of the peripheral devices attached to the bus and the processor determining if the data is addressed to it;
the addressed device retrieving the data from the bus if the determining step came to a positive conclusion; the method further comprising the step of:

- sending a digital request to said cellular phone (10) asking for the vehicle's location,
- interpreting said request by said processor (208) and sending a command to said GPS receiver (284) through said bus asking the position of the vehicle,
- said GPS receiver (284) responding by placing position data on the bus;

said position data being further transferred to said cellular phone (10) for remote transmission."

Claim 1 of the first auxiliary request reads as follows (amendments in comparison with claim 1 as granted being shown by underlinings and strikeouts):

"A method for transferring information relative to at least one remote source over a wireless radio network using a cellular radio telephone (10) outputting said information to a controller (200);

said controller transferring said information to at least a fi~~r~~st *[sic]* peripheral device of a plurality of peripheral devices (284, 288, 292) that also include second and third peripheral devices,
said method being characterised in that said controller (200) ~~being~~ is disposed on a vehicle and one of said peripheral devices including a Global Positioning System (GPS) receiver (284) providing ~~digital information~~ position data;
said information comprising first data from a remote source over the wireless radio network and also having control information related to identifying the peripheral device (284, 288, 292) that is to receive said ~~digital~~ information, ~~said receiving step~~ the method including the steps of:

- receiving signals by said cellular telephone (10);
- deciding whether said received signals contain voiceband or digital information;
- formatting said first data by a processor (208) of said controller (200) appropriately for said peripheral device (284, 288, 292) to which said first data is addressed;
- sending said first data by said controller (200) to said first peripheral device, which was identified to receive said first data, using a common bus (280) with which at least one of said first, second and third peripheral devices (284, 288, 292) communicates;
- generating, by one of said peripheral devices, second data addressed to another peripheral device;

said second data being placed on the bus and once the second data is present on the bus at least one of the peripheral devices attached to the bus and the processor determining if the second data is addressed to it;
the addressed peripheral device retrieving the second

data from the bus if the determining step came to a positive conclusion;

the method further comprising the step of:

- sending a ~~digital~~ request to said cellular phone (10) asking for the vehicle's location;
- interpreting said request by said processor (208) and sending a command to said GPS receiver (284) through said bus asking the position of the vehicle,
- said GPS receiver (284) responding by placing said position data on the bus, said position data being further transferred to said cellular phone (10) for remote transmission~~.~~;
- determining that additional information from a specific one of said peripheral devices is to be transmitted, wherein determining includes sensing a vehicle accident event using said specific peripheral device and alerting a determined remote source that said vehicle accident event was sensed, wherein alerting includes providing said additional information to said controller for remote transmission."

Claim 6 as granted reads as follows:

"A method, as claimed in Claim 1, further including: sending accident and emergency notification atarm *[sic]* data using one of said plurality of peripheral devices."

Reasons for the Decision

1. *Interpretation of claim 1 as granted*

1.1 The wording of claim 1 as granted is ambiguous in that there is no antecedent for "said received signals" and "said receiving step" (see the patent as published, col. 19, lines 50 and 53). In this respect, the board also notes that, by definition, the expression "receiving" does not cover the different steps the receiving step appears to include, namely a deciding, a formatting, a sending and a generating step, see claim 1, col. 19, line 50, to col. 20, line 8. The passages at col. 19, lines 49 and 50, and col. 20, lines 2 and 3, do suggest a receiving step, but this step concerns the reception of the first data by a peripheral device and not by the cellular radio telephone or the controller the above-mentioned different steps appear to relate to.

Further, in claim 1, col. 19, lines 46 to 50, it is stated in connection with the transfer of information from the remote source to the controller (see also col. 19, lines 33 to 36) that the peripheral device is to receive "said digital information". However, "digital information" is only referred to in col. 19, lines 44 and 45, in relation to a global positioning system (GPS) receiver, which is one of the peripheral devices, i.e. not in relation to the controller. It is further noted that, whilst the processor formats the first data appropriately for the peripheral device to which the first data is addressed (col. 19, lines 55 to 58), the passage at col. 20, lines 1 to 3, relating to the sending of data to the peripheral device does not explicitly refer to the sending of the formatted first

data. In this respect it is also noted that, whereas it appears from claim 1, col. 19, line 55, to col. 20, line 3, that only the "first data" is to be received by the identified peripheral device, the passages at col. 19, lines 37 to 39 and 46 to 50, appear to imply that both the first data and the control information included in the information are transferred to the identified peripheral device.

1.2 Following the established case law, the board will therefore interpret claim 1 in the light of the description and drawings of the patent.

In accordance with the passages at paragraphs [0056] to [0058] with reference to the flow chart of Fig. 16 (block 300) the board interprets "said received signals" as relating to the signals received by the cellular radio telephone. From these paragraphs, it also follows that the deciding, formatting, sending and generating steps do not specifically concern the reception of the first data by a peripheral device and that the wording "said receiving step including the steps of" in claim 1 must be broadly interpreted as, e.g., "said method including the steps of".

In the patent specification, reference is made to a GPS receiver only in paragraphs [0062], [0063] and [0065]. As described in these paragraphs, the GPS receiver provides, on request, information as to the location or position of the vehicle. This is also in accordance with the passage in claim 1, col. 20, lines 18 to 28, in which reference is made to "position data". The "digital information" provided by the GPS receiver as referred to in claim 1, col. 19, lines 44 and 45, is therefore

interpreted as digital vehicle position data, whilst the "digital information" referred to in claim 1, col. 19, line 50, is interpreted, in accordance with the passage at col. 19, line 55, to col. 20, line 3, as relating to the first data which is part of the information received by the cellular radio telephone and which is to be received, in a different format, by a peripheral device which is identified on the basis of the control information included in the information received by the cellular radio telephone. In the context of the present patent, "formatting" in claim 1 is understood by the board as relating to adapting received data such that it can be sent via the common data bus to and be understood by the peripheral device, see also col. 14, lines 7 to 9, of the patent specification as published.

1.3 At the oral proceedings it was common ground between the parties, be it for different reasons, that the wording in claim 1, col. 19, lines 48 to 50, i.e. "control information related to identifying the peripheral device (284, 288, 292) that is to receive said digital information", does not necessarily imply that the control information from the remote source includes address data for addressing the peripheral device in question. More specifically, the appellant argued that the patent specification did not mention address data in the context of transferring information from the remote source and that, consequently, the interpretation by the opposition division in the impugned decision according to which the claim implied a remote addressing was not supported by the patent specification. The respondent argued that, indeed, the claim did not mention address data and that, consequently, the control information

need not necessarily be or include address data as long as the peripheral device in question can be identified.

1.4 The board is of the view that if data is said to be addressed to a particular device then this implies that the data includes address data. The passage in claim 1, col. 20, lines 7 and 8 ("generating by one peripheral device second data addressed to another peripheral device") and the corresponding step 410 in Fig. 17, illustrating the operation of an embodiment described in the patent specification, see paragraph [0060], are consistent with such an interpretation. For the same reasons, in Fig. 16, which illustrates the operation of transferring data from the remote source to a peripheral device, step 316 ("Is data/control information addressed to a peripheral device?") implies that the data/control information includes address data.

However, in claim 1, the wording "control information related to identifying the peripheral device (284, 288, 292) that is to receive said digital information" does not imply that the data is addressed to a peripheral device. The board notes that the claim does not specify at what point or by which means the peripheral device in question is identified. This could, e.g., take place at the remote source by including address data into the data to be transferred, or at the controller, which on the basis of the control information could identify the peripheral device and add, only in the course of the subsequent formatting of the data to be sent to the identified peripheral device, the particular peripheral device's address before sending the formatted data via the bus to this peripheral device. Hence, the board is of the view that the method steps as set out in claim 1

as granted at col. 19, line 46, to col. 20, line 6, are not restricted to the case of a peripheral device being remotely addressed by the remote source.

2. *Inventive step - claim 1 as granted*

2.1 It was common ground between the parties that E2 represented the closest prior art on file.

2.2 E2, see in particular Figs 1 and 2 and col. 5, line 47 to col. 6, line 5, discloses a vehicle monitoring system in which, using the language of granted claim 1 as interpreted above, information is transferred from a remote source, i.e. base station 12, over a wireless radio network to a mobile RF unit 20. The mobile RF unit 20 outputs the information to a controller, i.e. control module 26, which is part of a vehicle monitoring arrangement 22 mounted on a vehicle 14. The information transferred includes an instruction or request to the control module 26 to access an instrument cluster 32. Having received this information, the control module 26 sends a corresponding command to the instrument cluster 32 via a data bus 44, see col. 5, lines 34 to 45. A processor, i.e. micro-computer 92, see Fig. 3, and a bus interface circuit 94 of the control module 26 control the data flow over the data bus 44 (col. 7, lines 29 to 39). Since the information command is recognized by the instrument cluster 32 which responds by the transmission of vehicle related information received from a variety of sensors 57 (see col. 5, lines 34 to 39, and Fig. 2), it follows that the command at least implicitly includes the request for information and is appropriately formatted for reception via the data bus 44 by the instrument cluster 32.

The instrument cluster 32 is one of a plurality of peripheral devices, e.g. driver interface module 28, sensor interface 34 and optional modules 36. The information transmitted by the instrument cluster 32 further includes a controller 26 designation address (col. 5, lines 55 to 58).

The information received from the remote source 12 over the wireless radio network therefore includes both first data relating to the instruction or request to access a peripheral device in order to obtain information therefrom, and control information which relates to identifying the peripheral device which is to be accessed by the control module, in this case the instrument cluster 32.

E2 thereby discloses the sending of a request to the mobile RF unit 20, asking for vehicle related information from a specific peripheral device, i.e. the instrument cluster 32. The request is interpreted by the processor 92 and a command is sent to the instrument cluster 32 through the bus, asking the instrument cluster 32 for the vehicle related information. The instrument cluster 32 responds by placing the requested information on the bus 44, from which it is transferred to the mobile RF unit 20 for remote transmission (col. 6, lines 1 to 5).

E2 further discloses that the instrument cluster 32 may generate second data, e.g. a message "low oil pressure", which is to be received by another peripheral device, i.e. the driver interface module 28 for displaying the message to the driver (col. 5, lines 34 to 39). Once the

message is placed on the bus 44, the driver interface module 28, which, see Fig. 3, includes a micro-computer 74 and a liquid crystal display (LCD) 82, will recognize it and retrieve it from the bus.

2.3 The subject-matter of claim 1 thus differs from the method disclosed in E2 in that according to claim 1:

i) one of the peripheral devices is a GPS receiver which provides digital vehicle position data in response to a digital request received by the mobile RF unit;

ii) the mobile RF unit is a cellular radio telephone, the method further including the step of deciding whether the information received from the remote source contains voiceband or digital information; and

iii) the first data is addressed to the peripheral device which is to receive the first data in a formatted form and the second data is addressed to another peripheral device which determines if the data is addressed to it.

2.4 In the board's view, claim 1 thereby defines a collocation of features, in which the technical problem underlying the claimed subject-matter when starting out from E2 consists of three separate partial problems. A first partial problem may be seen in expanding the known method such that additional vehicle related information can be monitored remotely (feature i)). A second partial problem may be seen in implementing the mobile RF unit (feature ii)) and a third in implementing or defining

the format of the data to be transferred via the data bus (feature iii)).

2.5 The formulation of these partial problems does not contribute to an inventive step, since expanding the functionalities of a known system, here by increasing the variety and/or amount of information which can be monitored remotely, and implementing certain components of a given system, in the present case the mobile RF unit and the data bus components, are common goals for the person skilled in the art.

2.6 When faced with the problem of expanding the monitoring functionalities of the system of E2, a person skilled in the art would consider E1, since it also relates to the remote monitoring of vehicle related information.

E1, see the abstract, page 5, lines 4 to 8, and claim 1, discloses an anti-theft and locating system for vehicles which enables the vehicle to be remotely located if assistance is requested or in the case of, e.g., theft. A central dispatch office (36 in Fig. 1) can interrogate a digital microprocessor within a vehicle (CPU 54 in Fig. 1) in order to obtain the vehicle's position. The microprocessor 54 monitors the vehicle position by means of a GPS receiver 46 which is connected to the microprocessor via a data bus 66. The microprocessor 54 alerts the central dispatch office 36 through a duplex cellular mobile telephone link including a digital modem 64 and a cellular mobile telephone transceiver 48 which may be fully digital (see also page 4, lines 18 to 20, and page 5, lines 31 to 33 and 39). Verbal communications can be established with the central dispatch office by way of the cellular mobile telephone

link (page 5, lines 8 to 10). Further, displays can be provided within the vehicle for displaying the position of the vehicle on a map (page 3, line 7).

2.7 Faced with the problem of expanding the remote monitoring functionalities of the system of E2, it would therefore have been obvious to the skilled person to use a GPS receiver as disclosed in E1 as one of the modules 36 connected to data bus 44 of the vehicle monitoring arrangement 22 of E2 in order to be able to remotely track the vehicle.

Further, since E1 discloses a mobile RF unit consisting of a single cellular mobile telephone transceiver, it would also have been obvious to the skilled person to implement the mobile RF unit 20 of E2 accordingly, thereby further expanding the system's monitoring capabilities in that verbal communications between the driver and the remote source are made possible. Using a mobile phone for the mobile RF unit implies that a distinction must be made between voice signals and digital signals, e.g. a digital request from the remote source, since the signals are to be processed by different components within the system.

2.8 Regarding feature iii), the board is of the view that the addressing of data which is to be transferred via a common bus between two devices of a plurality of devices connected to the common bus is a well-known concept in bus architectures. In this respect the board also notes that in E2 the information from the instrument cluster 32 includes a designation address (see col. 5, lines 55 to 58). It would therefore have been obvious to apply or extend the use of address data to all traffic on the

data bus. Further, deciding whether or not the command sent by the control module 26 is to be a formatted version of the request data received or need only implicitly include the request data is a matter well within the ordinary skills of the person skilled in the art, depending, *inter alia*, on the particular signal format used for the RF transmission and that of the data traffic on the particular data bus used, it being noted that none of these formats is further specified in claim 1. Feature iii) does not therefore contribute to an inventive step either.

2.9 In view of the above, a person skilled in the art, starting out from E2 and faced with the above-mentioned technical problems, would apply the teaching of E1 to the method disclosed in E2 and, using his common general knowledge, arrive at the subject-matter of claim 1 without the exercise of inventive skill.

2.10 At the oral proceedings the appellant argued that when using a cellular radio telephone as taught by E1 it would not be necessary to distinguish between voice and data, since voice and data could be processed in parallel or manual switching could be provided to switch between voice or data reception. The board does not find this argument convincing, since in claim 1 the step of deciding whether the received signals contain voice or data is not further specified and, hence, does not exclude a decision by an operator who manually operates a switch to determine via which of two parallel paths the received signal is to be transferred and processed.

2.11 The appellant further argued that a synergistic effect was obtained in that a common data bus was used for both

the transfer of information from a remote source and the internal communication between the peripheral devices. In the board's view, it would however be obvious having regard to the business delivery application described in E2 (col. 1, lines 23 to 27, col. 5, lines 2 to 4, and col. 8, lines 25 to 27) to use the GPS receiver of E1, which can have a display for displaying the position of the vehicle on a map (see point 2.6 above), additionally in order to inform the driver of, e.g., a new delivery destination.

2.12 The board therefore concludes that the subject-matter of claim 1 as granted does not involve an inventive step, Articles 56 and 100(a) EPC. Consequently, the respondent's main request is not allowable.

3. *First auxiliary request*

3.1 In accordance with Article 10b of the Rules of Procedure of the Boards of Appeal (OJ EPO 3/2003, pages 89 to 98) any amendment to a party's case after it has filed its reply to the statement of grounds of appeal may be admitted and considered at the board's discretion. In the board's view, and in line with the established case law of the Boards of Appeal, one of the criteria for admitting further amendments to the claims at a late stage of the appeal proceedings, in the case of the present first auxiliary request in the course of the oral proceedings, is whether or not the claims are clearly allowable. In the board's judgement, claim 1 of the first auxiliary request is not clearly allowable for the reasons set out below.

3.2 Claim 1, in like manner to claim 1 as granted, refers to a first, a second and a third peripheral device of a plurality of peripheral devices. However, the claim additionally specifies the step of "determining that additional information from a specific one of said peripheral devices is to be transmitted, wherein determining includes sensing a vehicle accident event using said specific peripheral device ...". Hence, the claim covers an embodiment in which one of the first, second and third peripheral devices is used for sensing the accident event and for providing the additional information.

3.3 The respondent argued that the claim was based on a combination of claims 1, 4 and 6 as granted.

Claim 4 as granted reads as follows:

"A method, as claimed in Claim 1, further including: making a determination that information from a fourth peripheral device of said plurality of peripheral devices (284, 288, 292) is to be transmitted including sensing a first event using said fourth peripheral device and alerting a predetermined remote source that said first event was sensed including providing said information from said fourth peripheral device to said controller (200)."

3.4 The board interprets claim 4 as granted such that, in addition to the first, second and third peripheral devices specified in claim 1 as granted, a fourth peripheral device is specified which is used for sensing an event. The combination of claims 1 and 4 as granted does not therefore appear to provide a basis for the

above-mentioned embodiment, see point 3.2, in which one of the first, second and third peripheral devices is used for sensing the event and for providing the additional information. Further, the board notes that claim 6 (see point IX above), in which "atarm" should evidently read "alarm", refers to accident and emergency notification alarm data and is not dependent on claim 4. This raises the question of whether or not the combination of the features of claims 4 and 6 as granted the respondent referred to is originally disclosed. The board also notes that claim 6 does not explicitly refer to a "vehicle accident event" as in present claim 1.

3.5 In view of the above, the board has doubts as to whether claims 1, 4 and 6 as granted provide a basis for the specific combination of features of claim 1. Since a basis is not clearly apparent from other parts of the application documents as originally filed, the board concludes that, at least *prima facie*, claim 1 of the first auxiliary request defines a combination of features which is not directly and unambiguously derivable from the content of the application as filed, contrary to Article 123(2) EPC.

3.6 For the above reasons, claim 1 of the first auxiliary request is not clearly allowable. The board therefore exercised its discretion pursuant to Article 10b RPBA not to admit the first auxiliary request to the appeal proceedings.

4. *Second auxiliary request - request for remittal*

4.1 According to Art. 111(1) EPC, the board may either exercise any power within the competence of the

department which was responsible for the decision appealed or remit the case to that department for further prosecution. Thus, it is at the board's discretion whether it examines and decides the case or remits the case to the department of first instance.

4.2 The second auxiliary request, i.e. that the case be remitted to the department of first instance for further prosecution on the basis of the claims of the first auxiliary request, was filed late by the respondent, namely in the course of the oral proceedings. Given that both the appellant and the board were in a position to deal with the first auxiliary request and having regard to the fact that the patent in suit is based on a patent application which was filed more than thirteen years ago, the board saw no reason to order a remittal and thereby prolong the proceedings.

4.3 The second auxiliary request was therefore rejected.

5. *Third auxiliary request*

5.1 In the course of the oral proceedings the respondent requested by way of a third auxiliary request, that the patent be maintained on the basis of a combination of claims 1 and 6 as granted. The board interprets claim 6 (see point IX above) such that the accident and emergency notification alarm data relates to the vehicle referred to in claim 1 as granted, see col. 19, line 42 of the patent specification, which is also in accordance with the passage at paragraph [0065]. The claim does not however require that, for example, the vehicle was stationary, e.g. parked, or was driven at the time of the accident.

5.2 The additional feature of claim 6 as granted does not *prima facie* contribute to an inventive step for the following reasons:

E1, see page 3, lines 4 to 6, page 4, lines 44 to 52, and claims 17 and 21, discloses that the vehicle locating system may include motion/shock detectors such that the system automatically alerts the central dispatch office whenever, e.g., a movement of the vehicle, window breakage or the forcing open of the hood is detected. In the board's view, motion/shock detectors are also suitable for detecting an accident in which the vehicle, when parked, is crashed into. It would therefore, at least *prima facie*, have been obvious to the skilled person, on applying the teaching of E1 to the method disclosed in E2, see point 2 above, to additionally have accident and emergency notification alarm data automatically sent to the remote source by using a motion/shock detector as one the plurality of peripheral devices.

5.3 In view of the foregoing and the reasons set out at point 2 in respect of the remaining features of the claim, i.e. the features of claim 1 as granted, the subject-matter of a combination of claims 1 and 6 as granted does not appear to involve an inventive step, Articles 52(1) and 56 EPC.

5.4 Consequently, the claim of the third auxiliary request is not clearly allowable. The board therefore exercised its discretion pursuant to Article 10b RPBA, see also point 3.1 above, not to admit the third auxiliary request to the appeal proceedings.

6. There being no allowable request, it follows that 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 Chairman:

A. Wolinski A. S. Clelland