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**Datasheet for the decision  
of 22 October 2010**

**Case Number:** T 0636/08 - 3.5.02

**Application Number:** 04730585.9

**Publication Number:** 1625547

**IPC:** G07B 15/00

**Language of the proceedings:** EN

**Title of invention:**  
Congestion Charge Payment Device

**Applicant:**  
King, John Graham

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 123(2)

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

**Keyword:**  
"Added subject-matter (yes) - both requests"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0636/08 - 3.5.02

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.02  
of 22 October 2010

**Appellant:** King, John Graham  
5 Coleridge Court  
16 Regency Street  
London SW1P 4DB (GB)

**Representative:** Crawford, Andrew Birkby  
A.A. Thornton & Co.  
235 High Holborn  
London WC1V 7LE (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 23 October 2007  
refusing European patent application  
No. 04730585.9 pursuant to Article 97(1) EPC  
1973.

**Composition of the Board:**

**Chairman:** M. Ruggiu  
**Members:** R. Lord  
P. Mühlens

## Summary of Facts and Submissions

- I. This is an appeal of the applicant against the decision of the examining division to refuse European patent application No. 04 730 585.9.
- II. The reasons given for the refusal were that the subject-matter of claim 1 according to each of the main and auxiliary requests did not involve an inventive step (Article 56 EPC) and that claim 12 of the main request defined subject-matter extending beyond the content of the application as filed (Article 123(2) EPC).
- III. In a communication under Article 15(1) RPBA accompanying the summons to oral proceedings of 3 August 2010 the board indicated *inter alia* that they had doubts as to whether the sets of claims filed with the statement of grounds of appeal satisfied the requirements of Article 123(2) EPC.

Oral proceedings before the board took place on 22 October 2010, at which, as he had previously informed the board, the appellant was not represented.

The appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 13 of the main request or on the basis of claims 1 to 9 of the auxiliary request, both filed with letter dated 28 February 2008.

- IV. Claim 1 according to the appellant's main request reads as follows:

"A message transmission apparatus for use in a vehicle comprising

location means (10) for determining a current geographical location of the apparatus;

storage means (12) for storing predetermined location data relating to the geographical location of one or more controlled areas, and predetermined time period data associated with the one or more controlled areas,

timing means (9) for providing the current time and/or date;

determining means (7) for determining whether or not the vehicle is moving;

first comparing means for comparing the current geographical location with the geographical location of the one or more controlled areas and for judging whether or not the current geographical location is within the one or more controlled areas;

second comparing means for comparing the current time and/or date with the predetermined time period data and for judging whether or not the current time and/or date is within the predetermined time periods;

whereby in use, if the result of the judgement of the determining means, the first comparing means and the second comparing means is affirmative, the message transmission apparatus is arranged to transmit a message via a telecommunications network to a third party computer to indicate the result."

Claim 1 according to the appellant's auxiliary request differs from that according to the main request in that the final paragraph is replaced by the following text:

"characterised in that

if the result of the judgement of the determining means, the first comparing means and the second comparing means is affirmative, the message transmission apparatus is arranged to transmit a message via a telecommunications network to a third party computer to indicate the result, the apparatus further comprising a receiving means for receiving a confirmation message confirming receipt of the transmitted message wherein the message is repeatedly transmitted until the confirmation message confirming the receipt of the transmitted message is received from the third party computer and then no more in the predetermined time period."

- V. The appellant did not file any substantive response to the communication from the board of 3 August 2010.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Added subject-matter (Article 123(2) EPC)*
  - 2.1 The independent claim 1 in each request defines in the last paragraph that a message is transmitted "*to a third party computer to indicate the result*". However, the original application, although it referred in the claims to a "*third party*", did not disclose a third party computer. The only computer which was disclosed in the original application was the "*computing arrangement 7*" in the vehicle, which is not the same entity. Thus the independent claim of each of the appellant's requests defines subject-matter extending

beyond the content of the application as originally filed.

2.2 The independent claim 1 in each request defines a "*determining means (7) for determining whether or not the vehicle is moving*", and further defines (in the final paragraph of each of these claims) that a message is only transmitted if the "*judgement*" of this means is "*affirmative*". The original application contains only two passages relevant to these definitions, namely those at page 4, lines 9 and 10 and page 12, lines 6 to 10 (of the published international application). Neither of these corresponds to what is defined in the present independent claims, since the first is significantly more general (disclosing merely that a message is sent only "*when the vehicle is in motion*"), and the second is significantly more precise (disclosing that the determining is carried out by the computing arrangement in the vehicle, that it determines whether the vehicle is moving from the GPS unit or the speedometer cable, and that if the vehicle is stationary the communication device is disabled). The wording of the present independent claims thus represents an undisclosed intermediate generalisation of the original teaching, thereby defining subject-matter which extends beyond the content of the application as originally filed.

2.3 The independent claim 1 in each request refers at several points to "*controlled areas*", which wording does not appear in the original application, which referred in this context only either to "*congestion charge zones*" (an expression used throughout the description), which expression has a more precise

meaning, in that it specifies the nature of the control which is to be carried out in the area or zone, or merely to "locations" (as in the claims and the introductory part of the description), which term gives no indication as to the nature or purpose of these locations. The wording of the present independent claims thus also in this respect represents an undisclosed intermediate generalisation of the original teaching, thereby defining subject-matter which extends beyond the content of the application as originally filed.

2.4 For each of the above reasons neither of the appellant's requests satisfies the requirements of Article 123(2) EPC. Therefore neither request is allowable.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

U. Bultmann

M. Ruggiu