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**Datasheet for the decision
of 11 June 2012**

Case Number: T 1355/08 - 3.5.02
Application Number: 04754994.4
Publication Number: 1631946
IPC: G08B 23/00, B60K 35/00
Language of the proceedings: EN

Title of invention:

Method and apparatus for classifying vehicle operator activity state

Applicant:

Motorola, Inc.

Headword:

-

Relevant legal provisions:

EPC Art. 56, 84, 123(2)

Keyword:

"Added subject-matter (yes)"
"Clarity (no)"
"Inventive step (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 1355/08 - 3.5.02

D E C I S I O N
of the Technical Board of Appeal 3.5.02
of 11 June 2012

Appellant: Motorola, Inc.
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Representative: Isarpatent
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 20 December 2007
refusing European patent application
No. 04754994.4 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: M. Ruggiu
Members: R. Lord
R. Moufang

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. 04 754 994.4. The reasons given for the refusal were that claim 1 as filed with letter dated 12 February 2007 (erroneously indicated as 2006 in section 5 of the "Summary of Facts and Submissions" in the decision) defined subject-matter extending beyond the content of the application as originally filed (Article 123(2) EPC), and that the subject-matter of that claim did not involve an inventive step (Article 56 EPC).
- II. The following document of the state of the art cited during the procedure before the first instance is relevant for the present decision:
- D2: D. Remboski et al, "Driver Performance Improvement through the Driver Advocate: A Research Initiative toward Automotive Safety", Society of Automobile Engineers, November 2000.
- III. In the statement of grounds of appeal dated 21 April 2008 the appellant requested in effect that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims filed with that statement. This remains the appellant's sole request. As an auxiliary measure, the appellant requested that oral proceedings be held. In support of their arguments relating to inventive step they also enclosed a copy of a Wikipedia article concerning statistical classification.

In a communication accompanying a summons to oral proceedings, dated 25 January 2012, the board informed the appellant *inter alia* of its preliminary opinion concerning the refusal ground under Article 123(2) EPC, raised an objection of lack of clarity in claim 1 (Article 84 EPC), and argued that even if those two objections were overcome, the resultant claim would not meet the requirement for inventive step of Article 56 EPC in the light of the teaching of D2.

In a letter dated 7 May 2012 the appellant stated that he did not intend to make any written submissions or to attend the oral proceedings scheduled for 5 June 2012.

In a letter dated 24 May 2012 the appellant was informed that the oral proceedings had been cancelled.

IV. Claim 1 of the appellant's sole request reads as follows:

" A method of classifying an activity state of a driver, the method comprising:

 providing (302) a statistical classifier, the statistical classifier being at least one of a C4.5, a RIPPER, and a Quadratic classifier; configuring the statistical classifier as an at least two-state activity classifier operable to recognize at least a first driving state corresponding to a maneuver activity and a second driving state corresponding to a non-maneuver activity;

 receiving (304) sensor data relating to at least one vehicle operating condition; and

 classifying (308) the driver activity using the configured statistical classifier into one of the at

least first and second driving states based upon the sensor data; and utilizing the classified state of the at least first and second driving states to determine whether to send an event to the driver of the vehicle."

- V. The only argument of the appellant which is relevant for the present decision is as follows:

The feature "*utilizing the classified state of the at least first and second driving states to determine whether to send an event to the driver of the vehicle*" was directly and unambiguously derivable from paragraph [0035] of the original application, so that the introduction of this feature into claim 1 did not contravene Article 123(2) EPC.

The remaining arguments in the appellant's grounds of appeal concerned the objection of lack of inventive step in the decision under appeal, which used as a starting point the document DE 101 53 987 A1 (D1), which objection has not been pursued by the board.

Reasons for the Decision

1. The appeal is admissible.

2. The board notes that, although the appellant's statement of grounds refers to an enclosed "Main request containing a set of amended claims", the claims enclosed with that letter were in fact identical to those which were the subject of the decision under appeal.

3. Given that oral proceedings were appointed by the board at the request of the appellant, the board interprets the statement in the appellant's letter of 7 May 2012 that they did not intend to attend the oral proceedings as being an implicit withdrawal of the request for oral proceedings, in accordance with the established case law of the Boards of Appeal.

4. In paragraphs I.3 to I.5 of the reasons of the decision under appeal the examining division argued that the introduction into claim 1 of the feature "*utilizing the classified state of the at least first and second driving states to determine whether to send an event to the driver of the vehicle*" contravened Article 123(2) EPC, arguing in particular that the passages of the original application cited by the appellant (then applicant) as providing a basis for this feature (paragraphs [0032], [0035] and [0040] to [0043]) did not provide a basis for the aspect relating to the sending of the "event", because the paragraphs [0032] and [0035] related to more specific embodiments than that claimed, and because paragraphs [0040] to [0043] related only to the types of statistical classifiers (i.e. to the other amendment in the claim), not to the feature at issue. The argument in the appellant's statement of grounds concerning this objection is merely a repetition of the point discussed there concerning paragraph [0035]. Given this, the board sees no reason to deviate from the conclusion of the examining division that this cited paragraph discloses only a specific technique for blocking or delaying the event using a direct interface with the devices (i.e. the cellular telephone, email device etc) or by an "intervening relationship" between the device and its

output transducer, and that the broader scope of the definition in the present claim 1 could only be derived from the application as filed by combining this teaching with teaching relating to other embodiments of the application. The board concludes that such a combination of different embodiments does not form part of what is clearly and unambiguously disclosed by the original application, so that the present claim 1 contravenes Article 123(2) EPC.

5. The expression "*to send an event to the driver*" in the present claim 1 is unclear, because it is not apparent how an "event" can be sent, when considering the normal meaning of the word "event", i.e. an occurrence, not a "thing" which could be in some way sent. The addition of this definition to the claim also leads to a further loss of clarity, since the opening phrase of the claim indicates that it defines a method for "classifying an activity state of a driver", whereas the added definition goes beyond the classifying, since it defines a step of utilising the classification. For both of these reasons the board considers that the present claim 1 lacks clarity within the meaning of Article 84 EPC. The appellant has not commented on this objection.

6. For the sake of completeness, the board notes that, to the extent that the present claim 1 could be considered to meet the requirements of Articles 84 and 123(2) EPC, the subject-matter of that claim would not meet the requirement for inventive step of Article 56 EPC for the following reasons.

- 6.1 The document D2 describes, in the section entitled "State-Machine Implementation" on pages 6 and 7, a series of scenarios in which the "Driver Advocate" determines whether to allow a mobile telephone call through to the driver on the basis of the driver's activity state, i.e. similar scenarios to those of the main embodiment of the present application. At least some of the different states can be considered to correspond to manoeuvre activity and non-manoevre activity within the meaning of the present application, in particular when taking into account the broad, and somewhat counter-intuitive, meanings of these terms implied by the present dependent claims 2 and 3.
- 6.2 As described in the last paragraph of the left-hand column on page 7 of D2 (i.e. immediately after the discussion of the scenarios), it is recognised that the sensor inputs and outputs will not be exact, and techniques such as "probabilistic state approaches" are suggested to enable a decision to be made in such circumstances. The board assumes that these approaches, in the context of the state transition approach mentioned in the previous paragraph, are statistical classifiers within the meaning of the present application. This conclusion is supported by the mention in the same sentence of neural networks (noting that in the Wikipedia article filed with the grounds of appeal these are mentioned as examples of statistical classifiers) and by the reference in the second paragraph of the right-hand column of the same page of D2 to "self-organizing machine learning paradigms in inductive learning modes".

6.3 Thus, the method of the present independent claim 1 is distinguished from that of D2 only by the specific types of statistical classifier defined in that claim (i.e. C4.5, RIPPER or quadratic classifiers). In this context, the board considers that the argumentation in section II.6 of the reasons of the decision under appeal applies correspondingly, in particular taking into account that the expression "quadratic classifier" used in the claim designates a broad class of such classifiers. Hence, the use of one of these specific types of known statistical classifiers in the method of D2 would be obvious to the skilled person. The board also observes that neither the application, nor the appellant's submissions, contains any indication that the specified types of statistical classifier claimed have any advantages compared to other known types. Therefore, the subject-matter of claim 1 of the appellant's request, to the extent that it could be considered to meet the requirements of Articles 84 and 123(2) EPC, does not involve an inventive step according to Article 56 EPC.

7. Since for each of the three reasons indicated above, the appellant's sole request does not meet the requirements of the EPC, the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

U. Bultmann

M. Ruggiu