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**Datasheet for the decision  
of 16 October 2012**

**Case Number:** T 1725/08 - 3.5.05

**Application Number:** 97901330.7

**Publication Number:** 875111

**IPC:** H04L 29/06

**Language of the proceedings:** EN

**Title of invention:**

Mobile portable wireless communication system

**Patent proprietor:**

Cellport Systems, Inc.

**Opponent:**

Volkswagen Aktiengesellschaft

**Headword:**

Wireless communication system/CELLPORT SYSTEMS

**Relevant legal provisions:**

RPBA Art. 12(4), 13(1), 13(3)

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

EPC Art. 56, 100(a)

**Keyword:**

Inventive step (yes)

Admission to appeal proceedings of document not admitted to  
first instance proceedings (no)

Admission of late-filed amendments to appellant's case (no)

**Decisions cited:**

G 0009/91, G 0010/91

**Catchword:**

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Case Number: T 1725/08 - 3.5.05

**DECISION**  
of the Technical Board of Appeal 3.5.05  
of 16 October 2012

**Appellant:** Volkswagen Aktiengesellschaft  
(Opponent) Berliner Ring 2  
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**Representative:** Gerstein, Hans Joachim  
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**Respondent:** Cellport Systems, Inc.  
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**Representative:** Farago, Peter Andreas  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 18 July 2008  
rejecting the opposition filed against European  
patent No. 875111 pursuant to Article 101(2)  
EPC.

**Composition of the Board:**

**Chair:** A. Ritzka  
**Members:** P. Corcoran  
G. Weiss

## Summary of Facts and Submissions

I. This appeal is against the decision of the opposition division to reject the opposition filed against the European patent no. EP 0 875 111 B. The decision was announced during oral proceedings on 1 July 2008. The written reasons for the decision were dispatched on 18 July 2008.

II. The decision under appeal referred *inter alia* to the following prior art documents cited by the opponent during the opposition proceedings in support of its objection that the claimed invention lacked an inventive step:

E7: US 4 989 146 A.

E17: K. Taylor and J. Trevelyan: "A Telerobot On The World Wide Web", Proceedings of Robots for Australian Industries Conference, Australian Robot Association, Melbourne, pp.108-120.

E18: K. Goldberg et al.: "Beyond the Web: manipulating the real world", Computer Networks and ISDN Systems, 1995, pp.209-219, ISSN: 1389-1286.

In said decision, an objection to the effect that the claimed invention lacked an inventive step in the light of E7 and E18 was rejected. The opposition division further decided not to admit E17 to the proceedings because its publication date could not be established.

III. The appellant (opponent) filed a notice of appeal which was received on 20 August 2008 with the appeal fee

being paid on the same date. A statement setting out the grounds of appeal was received on 21 November 2008.

- IV. With the statement setting out the grounds of appeal the appellant requested revocation of the patent in its entirety. In particular, the appellant submitted that the invention according to claims 1 and 9 as granted lacked an inventive step in the light of E7 and E18.

The appellant made further submissions to the effect that the document E17 should be admitted to the appeal proceedings and that the invention according to claims 1 and 9 as granted lacked an inventive step in the light of E7 and E17. An extract from the "Proceedings of the 1995 National Conference of the Australian Robot Association" was submitted as evidence that E17 had been made available to the public before the claimed priority date, *i.e.* 16 January 1996.

- V. With a letter of reply dated 17 April 2009, the respondent (patent proprietor) requested dismissal of the appeal or, in the alternative, the maintenance of the patent in amended form according to one of the three auxiliary requests filed with the letter of 1 June 2008.

- VI. In a communication accompanying a summons to oral proceedings, the board expressed its preliminary opinion that the submissions made by the appellant did not suffice to establish that the subject-matter of claims 1 and 9 of the opposed patent lacked an inventive step. The board indicated that it was not inclined to concur with the appellant's submissions to the effect that the prior art of E7 and E18 would lead

the skilled person to arrive at the claimed invention in an obvious manner.

With respect to E7, the board noted that the disclosure of said document appeared to be limited to a one-directional transmission of data from the micro-computer system of a vehicle to a remote station. In E7 the transfer of data was initiated from the vehicle and, in contrast to the disclosure of the opposed patent, there did not appear to be any possibility for a user at a remote station to initiate a request for information obtainable from the vehicle (cf. item 11.2 of the communication).

With respect to E17, the board referred to its discretionary power under Article 12(4) RPBA and noted that it was not inclined to admit said document into the appeal proceedings. The board further noted that, *prima facie*, the disclosure of E17 did not appear to be more relevant to the question of inventive step than that of E18. Thus, even if E17 were to be admitted to the appeal proceedings, said document did not appear to add anything of further relevance to the appellant's inventive step objections.

- VII. With a letter dated 15 June 2012, the appellant made further submissions in support of its position.
- VIII. With a letter dated 15 September 2012, the respondent submitted its comments on the appellant's further submissions.
- IX. Oral proceedings were held as scheduled on 16 October 2012. During the oral proceedings the parties confirmed

their requests and made additional oral submissions in support thereof.

- X. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- XI. The respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the decision under appeal be set aside and that the patent be maintained in amended form according to one of the three auxiliary requests filed with the letter of 1 June 2008.
- XII. Claim 1 as granted reads as follows:  
"A system for information transmission involving one or more remote stations (10) and a vehicle, comprising at least a first remote station (10a) including computer means (60) located at a distance from a vehicle, a wireless device (80) for location in the vehicle for use in sending and receiving information relative to said first remote station over an air link, a plurality of different vehicle devices (50) in the vehicle, each for receiving and/or sending information, controller means (30) including processing means (90, 94) in the vehicle for controlling the sending and receiving of said information using said wireless device (80) between said first remote station (10a) and the vehicle, said controller means including first standard network communication means (98, 102, 110) for use in presenting information for transmission over the air link in a first format that is acceptable to a first standardised network (68) that includes the air link,

and a second standard network communication means (122, 126), different from said first standard network communication means (98, 102, 110), for communicating with said controller means (30) and for use in presenting information in a second format that is acceptable to a second standardised network (124), with said second standard network communication means for communicating with said vehicle devices (50) in order to send and receive information relative thereto and in which said controller means (30) is arranged to enable said information to be properly communicated between said first and second standardised networks (68, 124), said apparatus characterised in that:

said first standardised network includes the Internet (68) and said first standard network communication means (98, 102, 110) includes a web server (102) and a transmission control protocol/Internet protocol, TCP/IP, stack (98) electrically connected thereto, said web server (102) in the vehicle for responding to a plurality of service related requests; said TCP of said TCP/IP stack (98) for regulating flow and structure of information to said web server (102) including an operative communication with said web server (102), said IP of said TCP/IP stack (98) for recognising source and destination addresses to ensure receipt at a proper location and for checking accuracy of packets having information received from the air link, wherein said TCP/IP stack (98) can be invoked when information is received by said controller means (30) and can be invoked when information is to be output from said controller

means (30) to an interface (84) of said wireless device (80), wherein said first standard network communication means (98, 102, 110) is arranged to enable said information to be provided to multiple users that utilize different makes of communication equipment, different processing hardware and different applications software executable by said processing means (90, 94) of said controller means (30)."

Claim 9 as granted seeks protection for substantially the same subject-matter in the form of a method claim.

XIII. The submissions of the appellant which are of relevance to the present decision are summarised as follows:

- (i) E7 disclosed a vehicular diagnostic system according to which data could be transmitted from a vehicle to a remote station via a wireless communication link which, as could be seen from Fig. 3 of E7, was a bi-directional communication link capable of supporting bi-directional data transfer between the vehicular telephone and a telephone at a remote station ("Head Office").
- (ii) According to the decision under appeal, the invention as defined by claim 1 as granted required that both the web server and the controller means responsible for protocol conversion be located in the vehicle and this distinguishing feature group could not be derived in an obvious manner from E18 (cf. item 19 of the decision). The appellant disputed this finding and argued that, in the light of E18, it would have been obvious for the skilled



person to locate a computing device having the requisite functionality in the vehicle.

- (iii) In this regard, it was submitted that the teaching of E18 concerning the use of World Wide Web technology for remote control applications was "universally applicable" and could be readily combined with the disclosure of E7.
- (iv) The robot-server C disclosed in E18 was a computer device with substantially the same functionality as the web server and controller means specified in claim 1. The skilled person would recognise that the robot-server is effectively collocated with the camera and robot arm connected thereto (cf. E18: Fig. 2 on p. 212) and that the robot-server, the camera and the robot arm are combined together to form a mobile unit.
- (v) The appellant submitted that the term "vehicle" was not necessarily restricted to "automotive vehicles" and was to be interpreted broadly as encompassing any mobile platform. Thus the "mobile robot" referred to in E18 was effectively a type of vehicle.
- (vi) On the basis of the foregoing considerations, the appellant argued that the subject-matter of claims 1 and 9 as granted could be derived in an obvious manner from E7 and E18.
- (vii) With respect to E17, the appellant contested the decision of the opposition division not to admit said document to the proceedings in view of the

uncertainty concerning its publication date. A further copy of said document including bibliographic data in the form of an extract from the "Proceedings of the 1995 National Conference of the Australian Robot Association" was submitted with the written statement setting out the grounds of appeal.

(viii) The technical details and mode of operation of the telerobot of E17 had been made available to an unrestricted group of persons over the Internet and it was evident from various references in E17 relating to specific points in time that the technical knowledge relevant for the assessment of the opposed patent was in the public domain before the claimed priority date of the opposed patent.

(ix) E17 disclosed the use of the TCP/IP protocol for data transmission via the Internet and a robot server running a web server program which could supply a file in response to a user request (cf. E17: section 2.2; section 3.2, last paragraph; section 4.4, last paragraph). It further made reference to remote inspection and monitoring applications and mobile robot platforms (cf. E7: section 5.3). The disclosure of E17 was thus potentially more relevant than E18 and for this reason it should be admitted to the appeal proceedings.

(x) The appellant additionally requested that the following documents be admitted to the appeal proceedings:

E8: WO 90/09645 A;

E11: M. Kunze, "Geheimtip - Entwickeln und Testen von Web-Projekten", c't Magazin für Computertechnik, 1995, Heft 09, p.166 et seq., Heise-Verlag, ISSN: 0724-8679.

The appellant further requested to be allowed to present new arguments based on these documents.

XIV. The submissions of the respondent which are of relevance to the present decision are summarised as follows:

- (i) The gist of the teaching of E7 was to read out data from a memory within the vehicle and to transmit said data via an acoustically coupled telephone to a computer located remote from the vehicle wherein the data transfer was said to be for trouble diagnostics (cf. E7: col.1, 1.31-47 and 1.57-60). According to E7, before any data could be read out, the user in the car had first to activate the portable phone, to dial, to start the phone call, and then to connect the portable phone with an acoustic coupler. Thus, a bidirectional invocation of the communication according to the present invention was not possible.
- (ii) E18 was a document which dealt with a remotely controlled robot and thus related to a technological field quite different from the vehicular information system of the present invention.

The robot of E18 was a substantially stationary system comprising a moving robot arm, a camera and a computer. The "mobile robot" mentioned in the

last sentence of the article was a futuristic idea in view of the bandwidth and data rate available in 1995 and it would not lead the skilled person to mentally bridge of all the gaps required to come to the present invention. There was no disclosure in E18 of a robot that could be considered "mobile" in the sense of the invention.

- (iii) The robot server C of E18 should not be considered as a "web server" in the sense of claim 1 merely because it had Internet communications with another computer, i.e. the server A. The appellant's arguments in this regard wrongly implied that all communications on the Internet must be web communications (i.e. using http or similar) whereas the Internet significantly pre-dated the development of the world-wide web, and was used for other forms of communication, e.g. e-mail.
  
- (iv) No convincing rationale for combining E7 and E18 had been provided by the appellant. E7 described communications to/from a vehicle. E18 described using the worldwide web to control remotely the operation of a robot. There did not seem to be any reason for the skilled person to turn to E18 to improve the system of E7. Even if the skilled person were to become aware of E18, the skilled person would regard the teachings of these two documents as incompatible with one another from a technical perspective. Thus, the proposed combination of E7 and E18 did not render the subject-matter of the opposed patent obvious.

- (v) E17 had been correctly excluded as prior art by the opposition division because it was late-filed during opposition proceedings and its publication date could not be determined. The appellant's submissions that parts of E17 indicated that the robot was already publicly available via the world wide web on 9 September 1994 related to a potential prior public use of the robot, but did not help to establish the publication date of E17 itself.
  
- (vi) Although, the appellant had filed additional copies of E17 with the statement of grounds of appeal which indicated that it was available to the public before the priority date of the patent, this information had been filed too late and should not be considered, especially as there had not been any reason provided as to why it had not been filed earlier.
  
- (vii) With respect to its content, E17 did not disclose any more relevant subject-matter than E18 and this confirmed that there was no reason to admit it into the proceedings. E17 was concerned with a technological field quite different from that of the vehicular information system of the patent in suit. The robot system of E17 was a substantially stationary system comprising a moving robot arm, a camera and a computer for controlling the robot. For reasons similar to those given in respect of E18, E17 would not have led the skilled person to the claimed invention.
  
- (viii) Concerning the appellant's request to admit the documents E8 and E11 to the appeal proceedings, the

respondent submitted that it would be inappropriate, at such a late stage of the appeal proceedings, to admit new documents which could have been but were not discussed during the opposition proceedings. The request for amendment of the appellant's case should not be granted.

XV. In response to the appellant's request to amend its case by admitting the documents E8 and E11 to the appeal proceedings, the board noted the following:

- (i) E8 and E11 had been filed with the notice of opposition and were cited in the decision under appeal. However, the minutes of the oral proceedings held before the opposition decision gave no indication that any arguments based on said documents had been pursued by the then opponent and present appellant during said oral proceedings. Neither did the decision under appeal contain any reference to arguments based on these documents.
- (ii) As far as the appeal proceedings were concerned, the presentation of the appellant's case in the written statement setting out the grounds of appeal contained no mention of either E8 or E11 and gave no indication that the appellant intended to pursue arguments based on these documents.

Thus, the request represented an attempt to make a significant amendment to the appellant's case at a very late stage in the appeal proceedings and the question of its admissibility would have to be decided having regard to the provisions of Articles 12 and 13 RPBA.

XVI. At the end of the oral proceedings the chair declared the debate closed and announced the board's decision.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Preliminary observations*
  - 2.1 The opposed patent relates to bi-directional communications over an air link and, in particular, information transfers between a vehicle and one or more remote stations using an established network, such as the Internet (cf. patent specification: [0001]).
  - 2.2 According to the patent specification, communication of information between a vehicle having a plurality of vehicle devices and one or more remote sites is implemented using standardized network communication links (cf. patent specification: [0008]).
  - 2.3 Information transfer between remote sites and the vehicle takes place over a first standardised network communication link such as the Internet (cf. patent specification: col.3 l.7-9; col.7 l.22-30). To support information transfer in standardised format over this communication link, a web server is provided in the vehicle (cf. patent specification: col.4 l.5-13).
  - 2.4 The vehicle is also provided with a plurality of vehicle devices that transmit, receive, or both transmit and receive desired data and are connected to a second standardized network which is preferably based

on a commercially available network technology such as the Controller Area Network (CAN) or Arcnet (cf. patent specification: [0013]).

2.5 According to the embodiment of Fig. 3 (cf. patent specification: [0034]), a user at a remote station can input a message including a request for information that is obtainable from the vehicle. The web server located in the vehicle interprets the transmitted request and determines that certain data stored in the data memory is being requested by a user at the remote site. The stored data is accessed and prepared by the web server in accordance with http format for transmission over the Internet (cf. patent specification: [0011] and [0014])

3. *Claim 1*

3.1 In the decision under appeal (cf. point 10. thereof), the following breakdown of the features of claim 1 of the disputed patent was given:

A system for information transmission involving

- (a) one or more remote stations (10) and a vehicle,
- (b) comprising at least a first remote station (10a) including computer means (60) located at a distance from a vehicle,
- (c) a wireless device (80) for location in the vehicle for use in sending and receiving information relative to said first remote station over an air link,
- (d) a plurality of different vehicle devices (50) in the vehicle, each for receiving and/or sending information,



- (e) controller means (30) including processing means (90, 94) in the vehicle for controlling the sending and receiving of said information using said wireless device (80) between said first remote station (10a) and the vehicle,
- (f) said controller means including first standard network communication means (98, 102, 110) for use in presenting information for transmission over the air link
- (g) in a first format that is acceptable to a first standardised network (68) that includes the air link,
- (h) and a second standard network communication means (122, 126), different from said first standard network communication means (98, 102, 110), for communicating with said controller means (30) and for use in presenting information in a second format that is acceptable to a second standardised network (124),
- (i) with said second standard network communication means for communicating with said vehicle devices (50) in order to send and receive information relative thereto
- (j) and in which said controller means (30) is arranged to enable said information to be properly communicated between said first and second standardised networks (68, 124), said apparatus characterised in that:
- (k) said first standardised network includes the Internet (68)
- (l) and said first standard network communication means (98, 102, 110) includes a web server

- (102) and a transmission control protocol/Internet protocol, TCP/IP, stack (98) electrically connected thereto,
- (m) said web server (102) in the vehicle for responding to a plurality of service related requests;
  - (n) said TCP of said TCP/IP stack (98) for regulating flow and structure of information to said web server (102) including an operative communication with said web server (102),
  - (o) said IP of said TCP/IP stack (98) for recognising source and destination addresses to ensure receipt at a proper location and for checking accuracy of packets having information received from the air link,
  - (p) wherein said TCP/IP stack (98) can be invoked when information is received by said controller means (30) and can be invoked when information is to be output from said controller means (30) to an interface (84) of said wireless device (80),
  - (q) wherein said first standard network communication means (98, 102, 110) is arranged to enable said information to be provided to multiple users that utilize different makes of communication equipment, different processing hardware and different applications software executable by said processing means (90, 94) of said controller means (30).

3.2 This feature breakdown will be used hereinafter when referring to particular features of claim 1.

*Article 100(a) EPC 1973*

4. *Alleged lack of inventive step*

4.1 The appellant requested revocation of the opposed patent invoking a ground for opposition under Article 100(a) EPC 1973, namely that the subject-matter of claims 1 and 9 as granted lacked an inventive step.

4.2 The appellant's submissions in this regard contained in the written statement setting out the grounds of appeal relied primarily on the prior art disclosures of E7 and E18.

4.3 The appellant also requested admission of the document E17 to the appeal proceedings and further argued that the claimed invention lacked an inventive step in the light of E7 and E17.

4.4 During oral proceedings, the appellant additionally made a request to present new arguments concerning inventive step based on the documents E8 and E11 (cf. Facts and Submissions, item XIII(x) above).

5. *Observations re E7*

5.1 E7 relates to an automotive vehicle which is equipped with an on-board microcomputer having a function of pre-diagnosing and indicating potential problems ("automotive trouble") in response to data ("electrical informations") which are stored in a memory device (cf. E7: abstract).

5.2 An acoustical coupler is mounted on the vehicle and electrically connected to the memory device to convert the data to acoustic signals. The acoustical signals are transmitted via a telephone line to a diagnostic computer which is located remotely from the vehicle, for example, in the head office of a service firm, thereby making it possible to perform diagnosis without carrying the memory device to a service factory.

5.3 In a preferred embodiment according to Fig. 5 of E7, a data transmitting switch is provided to initiate the transmission of data stored in the memory device to a remote station (cf. E7: col.5 l.10-13 and l.31-33).

5.4 E7 thus discloses an arrangement according to which an on-board microcomputer system in a vehicle is used to collect data from a plurality of vehicle devices such that the collected data can be transmitted to a remote station for diagnostic purposes. The transmission of the data to the remote station is initiated from the vehicle by activating a data transmitting switch. There is no indication in E7 that the remote stations are capable of initiating a request for data from the vehicle.

6. *Inventive step*

6.1 The system for information transmission according to claim 1 comprises "controller means" (cf. feature (e)). The "controller means" includes "first standard network communication means" which in turn includes "a web server" and "a transmission control protocol/Internet protocol, TCP/IP, stack" electrically connected thereto (cf. feature (1)). The claim further specifies that the

- web server is located in the vehicle for responding to a plurality of service related requests (cf. feature (m)).
- 6.2 The term "web server" as used in claim 1 is to be understood as denoting a computing device which is adapted to receive and process requests from remote clients such that the data exchange between the remote clients and the "web server" takes place using standardised "World Wide Web" data transmission protocols, e.g. HTTP.
- 6.3 The feature group identified in 6.1 above enables the processing and response to requests for data originating from a remote site. In the board's judgement, this feature group is neither disclosed nor suggested by E7.
- 6.4 The appellant argued to the effect that starting from the disclosure of E7, the provision of a web server located in the vehicle as specified in claim 1 would have been obvious to the skilled person in the light of E18. The board does not, however, concur with the appellant's submissions in this regard for the reasons which follow.
- 6.5 Having regard to the fact that E18 relates to a teleoperated robot system and makes no identifiable mention of vehicular information systems, the board cannot concur with the appellant's submissions that the skilled person would have considered it obvious to combine the teaching of said document with that of E7 which relates to a vehicular information system.

- 6.6 The appellant submitted that the skilled person would recognise that the teaching of E18 concerning the use of World Wide Web technology for remote control applications was "universally applicable" and could thus be readily combined with the disclosure of E7. However, given that the remote stations of E7 are not capable of initiating requests for vehicular data (cf. 5.4 above), the vehicle of E7 has no obvious requirement for technical means such as a web server for processing incoming requests from remote clients. Thus, even if it were to be accepted that E18 provides evidence that at the claimed priority date World Wide Web technology was known *per se* and that it could be used for remote control applications, the board judges that the disclosure of E18 would not lead the skilled person to incorporate such technology into the vehicle of E7.
- 6.7 The board particularly notes in this regard that E18 neither discloses nor suggests locating a web server in a vehicle or in any kind of mobile unit which might be considered comparable to a vehicle.
- 6.8 The robot of E18 is an essentially stationary system comprising a robot arm and a camera (cf. E18: section 5., second paragraph). The only apparent mobility in such an arrangement is that of the robot arm which can be positioned to direct a burst of compressed air (cf. E18: Abstract; section 6.5). E18 further suggests placing the robot "out in the field", in a remote anthropological site or on the moon (cf. E18: section 8.). However, none of the suggested placements require the robot to be mobile. For this reason, the board cannot concur with the appellant's submissions to the

effect that the robot of E18 is a mobile platform comparable to a "vehicle".

- 6.9 The concluding sentence of E18 reads as follows:  
*"We might also speculate about other levels, which might allow remote users to control a mobile robot and thus 'teleambulate'".*  
This concluding remark which is speculative in nature can be interpreted as a hint that the robot could be made mobile. Nevertheless, it does not follow from this that the skilled person would be led to incorporate the robot server into a mobile robot. The robot server of E18 is a computer device which is inherently separate from the robot and communicates with it via a serial communication link (cf. E18: paragraph bridging pp. 212 and 213). There is no identifiable teaching or suggestion in E18 to the effect that the robot server can or should be integrated into the robot, irrespective of whether the latter is stationary or mobile.
- 6.10 The board therefore concludes that E18 neither discloses nor suggests integrating a computer device having functionality comparable to that of a "web server" into any kind of mobile platform.
- 6.11 In view of the foregoing, the board judges that the skilled person would not have attempted a combination of the disclosures of E7 and E18 (cf. 6.5 above) and further judges that, even if such a combination were to be attempted, the disclosure of E18 would not have led the skilled person to arrive at the claimed invention.

*Admission of E17 into the appeal proceedings*

7. *Observations re E17*

7.1 The opposition division decided not to admit E17 to the opposition proceedings in view of the fact that its publication date could not be determined (cf. Facts and Submissions, item II. above).

7.2 On the basis of the bibliographic data submitted with the written statement setting out the grounds of appeal (cf. Facts and Submissions, item IV. above), the board is satisfied that E17 was published prior to the claimed priority date of the opposed patent. Nevertheless, such evidence of the publication date of E17 could have been presented in the first instance proceedings and the appellant did not provide any reason as to why it had failed to do so at that stage of the proceedings.

7.3 As far as the content of E17 is concerned, the board notes that although said document discloses a robot server comprising web server functionality (cf. E17: section 2.2) and refers to mobile robot platforms using wireless computer network links (cf. E17: section 5.3), it contains no identifiable teaching or suggestion to the effect that the robot server can or should be integrated into the robot, irrespective of whether the latter is stationary or mobile.

7.4 In the board's judgement, E17 neither discloses nor suggests locating a device having "web server" functionality in a mobile robot platform. On this basis, the board concludes that said document is of no more immediate relevance to the question of inventive step



than E18 (cf. preceding observations re E18, in particular 6.5, 6.10 and 6.11 above) and consequently there is no reason for admitting it to the appeal proceedings.

- 7.5 In view of the foregoing, the board exercising its discretion under Article 12(4) RPBA decided against admitting E17 into the appeal proceedings.

*Request to admit late-filed amendments of the appellant's case*

8. *Request to admit E8 and E11*

- 8.1 During oral proceedings before the board, the appellant requested that the documents E8 and E11 be admitted to the appeal proceedings and that it be allowed to present new arguments based on said documents (cf. Facts and Submissions, item XIII (x) above). This request effectively constitutes a request to be allowed to present a fresh factual case against the patent in suit.

- 8.2 Article 12(2) RPBA requires that a party's statement of grounds of appeal contains its complete case. According to Article 13(1) RPBA, any amendment to a party's case after it has filed its grounds of appeal is admissible, not as of right, but at the Board's discretion. Article 13(3) RPBA stipulates that amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings.

- 8.3 The primary purpose of the *inter partes* appeal procedure is to give the losing party an opportunity to challenge the decision against it and to obtain a judicial ruling on whether a first-instance decision is correct (see G 9/91 and G 10/91). The appeal proceedings are thus largely determined by the factual and legal scope of the preceding opposition proceedings. Consequently, the parties have only limited scope to amend the subject of the dispute in second-instance proceedings (see "Case Law of the Boards of Appeal of the EPO", 6th Ed. 2010, VII.E.16.2.1).
- 8.4 The appellant's request effectively represents an attempt to have the board consider a different factual framework than the opposition division (cf. Facts and Submissions, items II. and XV. above, in particular XV(i)). Granting this request would thus run contrary to the aforementioned primary purpose of the *inter partes* appeal procedure.
- 8.5 Having regard to the provisions of Article 12(1) RPBA, it is further noted that the written statement setting out the grounds of appeal did not mention either E8 or E11 nor did it contain any indication to the effect that the appellant intended to present arguments based on these documents during the appeal proceedings.
- 8.6 According to the appellant, the request to amend its case was occasioned by matters which had arisen in the course of the oral proceedings before the board, in particular the board's observations to the effect that the remote stations of E7 were not capable of initiating requests for vehicular data (cf. 5.4 above).

- 8.7 The board notes, however, that its preliminary opinion concerning this particular aspect of E7 had already been set forth for the attention of the parties in the communication accompanying the summons to oral proceedings (cf. Facts and Submissions, item VI. above). Thus, having been duly apprised of the board's preliminary opinion concerning E7, if it desired to amend its case by introducing further documents, the onus was on the appellant to give timely notification of its intentions in this regard in advance of the scheduled oral proceedings.
- 8.8 As the appellant only submitted the request for amendment of its case during oral proceedings, the respondent had not received any prior notification which would have allowed it to prepare its response to the proposed amendment.
- 8.9 In the board's judgement, granting the appellant's request at such a late stage of the proceedings would have raised fresh issues which the respondent could not reasonably be expected to deal with without adjournment of the oral proceedings (cf. Article 13(3) RPBA).
- 8.10 In view of the foregoing and having particular regard to the late stage of the proceedings at which the appellant's request was made, the board exercising its discretion under Article 13(1) RPBA decided against admitting E8 and E11 to the appeal proceedings.

### *Conclusions*

9. The board judges that the subject-matter of claims 1 and 9 as granted involves an inventive step over E7 and

E18 (cf. 6.11 above). In view of this finding, there is no need to consider the respondent's auxiliary requests filed with the letter of 1 June 2008 (cf. Facts and Submissions, item XI. above). As the appellant's request for revocation of the patent is not allowable, the appeal must be dismissed.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chair:

K. Götz

A. Ritzka