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**Datasheet for the decision  
of 29 November 2013**

**Case Number:** T 2352/10 - 3.5.05

**Application Number:** 04075616.5

**Publication Number:** 1460795

**IPC:** H04L9/00

**Language of the proceedings:** EN

**Title of invention:**

Digital receiver and method for receiving secure group data

**Applicant:**

Delphi Technologies, Inc.

**Headword:**

Receiving secure group data/DELPHI

**Relevant legal provisions:**

EPC Art. 84, 123(2)

RPBA Art. 15(3)

**Keyword:**

Amendments - added subject-matter (no)

Claims - clarity after amendment (yes)

**Decisions cited:**

**Catchword:**



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Case Number: T 2352/10 - 3.5.05

**D E C I S I O N  
of Technical Board of Appeal 3.5.05  
of 29 November 2013**

**Appellant:** Delphi Technologies, Inc.  
(Applicant) PO Box 5052  
Troy, MI 48007 (US)

**Representative:** Neill, Andrew Peter  
Delphi Diesel Systems  
Patent Department  
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**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 28 July 2010 refusing European patent application No. 04075616.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair:** A. Ritzka  
**Members:** M. Höhn  
F. Blumer

## **Summary of Facts and Submissions**

- I. This appeal is against the decision of the examining division, posted 28 July 2010, refusing European patent application No. 04075616.5 on the grounds of Article 123(2) EPC and Article 84 EPC.
- II. The notice of appeal was received on 7 September 2010. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 24 November 2010. The appellant requested that the appealed decision be set aside and that a patent be granted on the basis of the set of claims filed on 6 May 2010 on which the decision under appeal was based.
- III. A summons to oral proceedings, to be held on 29 November 2013, was issued on 6 August 2013. In an annex accompanying the summons the board expressed the preliminary opinion that the subject-matter of independent claims 1 and 10 appeared to fulfil the requirements of Article 123(2) EPC.
- IV. However, claims 1 and 10 did not appear to fulfil the requirements of Article 84 EPC. The board gave its reasons for the objections and explained why it did not consider the appellant's arguments convincing.
- V. By letter dated 17 October 2013 the appellant submitted an amended main request, a first auxiliary request and a second auxiliary request together with arguments supporting these requests. The appellant further stated that it was happy with any of these requests if any were acceptable to the board and that the appellant would like to avoid oral proceedings.

- VI. By facsimile dated 25 November 2013 the board informed the appellant that it was minded to accept the first auxiliary request and to remit the case on this basis to the first instance for further prosecution. However, the main request did not appear to be acceptable.
- VII. By letter dated 27 November 2013 the appellant requested that the application be continued with the first auxiliary request and informed the board that it would not be attending the oral proceedings.
- VIII. Independent claim 1 according to the first auxiliary request reads as follows:

"A digital radio frequency receiver (12) for receiving and deciphering broadcast radio frequency signals containing secure information, said receiver (12) comprising:  
a data decryption circuit (36) comprising memory (40) for storing a plurality of separately selectable decryption keys (72) which are based on defined group criteria and are selectable based on characteristics of the receiver environment, each of the stored decryption keys (72) corresponding to a different one of the receiver environment characteristics and having a value based on one of the receiver environmental characteristics as determined by the environment of the receiver;  
an input (14) for receiving a radio frequency signal comprising a data stream comprising an encrypted message (62) and a plurality of key selectors (52A-52M), wherein (1) each of the key selectors identifies a predetermined one of the plurality of receiver environmental characteristics, and (2) decryption of the encrypted message requires a

decryption key corresponding to a predetermined environmental characteristics; and the data decryption circuit (36) further comprises a processor (40) configured to select the stored decryption key corresponding to the receiver environmental characteristic identified by each of the key selectors (52A-52M) included in the received radio frequency signal and use the selected decryption keys in decrypting the encrypted message."

- IX. Oral proceedings were held on 29 November 2013 in the absence of the appellant. After due deliberation on the basis of the written submissions, the board announced its decision.

## **Reasons for the Decision**

### Admissibility

The appeal complies with Articles 106 to 108 EPC (see Facts and Submissions, point II above). It is therefore admissible.

1. Non-attendance at oral proceedings

By letter dated 27 November 2013 the board was informed that the appellant would not be attending the oral proceedings. The board nonetheless considered it expedient to maintain the date set for oral proceedings. Nobody attended on behalf of the appellant.

Article 15(3) RPBA stipulates that the board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral

proceedings of any party duly summoned who may then be treated as relying only on its written case.

Hence, the board was in a position to announce a decision at the end of the oral proceedings.

2. Interpretation of the appellant's request

After having been informed by the board that it was minded to accept the first auxiliary request and to remit the case on this basis to the first instance for further prosecution, the appellant requested "that the application is continued with the first auxiliary request" (i.e. Auxiliary Request 1 as filed with letter dated 17 October 2013). The appellant did not explicitly mention the status of the (former) main request. However, the board takes the view that the appellant was asking it to continue the proceedings with the first auxiliary request, on which it had given a positive preliminary opinion, as the highest ranking request. The board therefore takes the first auxiliary request to be the new main request, but continues to refer to it, as the appellant did, as the "first auxiliary request".

3. Amendments - Article 123(2) EPC

3.1 The examining division objected to claim 1 on the grounds that the expression "successful decryption of the message occurs only when the receiver environmental characteristics required for decryption of the encrypted message matches the same corresponding receiver environment characteristic" extended beyond the disclosure of the originally filed application. The wording gave the reader the impression that successful

decryption was detected on the basis of such a comparison.

- 3.2 The board however agrees with the appellant that the word "only" does not specify that nothing more than such a comparison is required for a successful decryption. Rather the feature to which the cited formulation belongs specifies a condition necessary for decrypting the message, but does not exclude further steps having to be taken for successful decryption. The respective feature merely states that the use of a selected decryption key for successful decryption requires that the actual environmental characteristics of a receiver match the characteristics specified in the message header.

A disclosure for this feature is found in figure 3, steps 112 to 118, and on page 8, lines 4 to 8 as originally filed.

- 3.3 As far as the objection to claim 10 is concerned, the examining division argued that the formulation "in a selected one of the plurality of radio frequency receivers..." implied addressing or selecting a receiver. This interpretation, however, is not correct, since the corresponding feature of claim 10 only specifies what happens in a particular receiver, i.e. in a receiver fitting the environmental characteristics specified in the message header. Only in such a receiver, i.e. a selected receiver in the wording of method claim 10, can the correct decryption key corresponding to the environmental characteristics of the predetermined identified receiver be selected. Since the application discloses and claim 10 specifies that the radio data stream is broadcast, only the receiver fitting the environmental characteristics

specified in the message header is selected, other receivers ignore the broadcast message (see e.g. page 9, lines 24 to 31).

The appellant has referred to the disclosure on page 7, line 15 onwards and page 9, line 19 onwards. This passage also discloses that it is a "selected vehicle manufacturer" which is addressed by a message in the broadcast radio data stream.

The subject-matter of independent claims 1 and 10 therefore fulfils the requirements of Article 123(2) EPC.

#### 4. Clarity - Article 84 EPC

4.1 The examining division argued that claims 1 and 10 did not meet the requirements of Article 84 EPC, because they did not specify all the technical features essential to the solution of the problem underlying the present alleged invention, since they did not specify an allocation of different keys to different manufacturers or that the values "based on" the environment differed for different environments (i.e. different manufacturers have different keys).

The examining division objected to claims 1 and 10 which specify that "each of the stored decryption keys (72) corresponding to a different one of the receiver environment characteristics and having a value based on one of the receiver environmental characteristics as determined by the environment of the receiver".

4.2 In the board's view this formulation is based on the disclosure in figures 4 and 5 and on page 7, lines 24 to 29 as originally filed. Each stored decryption key



72 (see figure 5) corresponds to a key selector 52 (see figure 4) representing one of the receiver environmental characteristics and indicating by a binary value "0" or "1", whether and which decryption key is to be used.

The board agrees with the appellant that the feature "each of the stored decryption keys (72) corresponding to a different one of the receiver environment characteristics" of claim 1 renders it clear that specific and different keys are based on different environments.

- 4.3 Further objections under Article 84 EPC were overcome by the appellant by deleting the corresponding parts of the last feature in independent claims 1 and 10.

The board therefore agrees with the appellant that claims 1 and 10 fulfil the requirements of Article 84 EPC.

5. Since the request with which the appellant wanted the application to be continued has overcome the objections in the decision under appeal and those raised by the board, the board does not have to deal with the other requests.

6. Remittal

The question of compliance with Article 52(1) EPC, in particular as regards novelty and inventive step, was not discussed during the oral proceedings before the first instance nor is it mentioned in the decision under appeal. The board therefore judges that it would not be appropriate for this question to be decided during the present appeal proceedings.

As the appellant has succeeded in filing an amended set of claims which, in the board's judgement, overcome its reservations concerning compliance with the requirements of Article 84 EPC, remittal of the case to the department of first instance for further prosecution (Article 111(1) EPC) is judged to be the most appropriate course of action under the given circumstances, in order not to deprive the appellant of the possibility of having all other outstanding matters decided by two instances.

## **Order**

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

The decision under appeal is set aside.

The case is remitted to the department of first instance for further prosecution on the basis of Auxiliary Request 1 (claims 1-14) as filed with letter dated 17 October 2013.

The Registrar:

The Chair:



K. Götz

A. Ritzka

Decision electronically authenticated