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**Datasheet for the decision  
of 12 July 2018**

**Case Number:** T 1306/12 - 3.5.01

**Application Number:** 09006826.3

**Publication Number:** 2124177

**IPC:** G06Q20/00

**Language of the proceedings:** EN

**Title of invention:**

Method and device for communication between an automobile and a point of sale

**Applicant:**

Visteon Global Technologies, Inc.

**Headword:**

Mobile commerce by user of an automobile / VISTEON

**Relevant legal provisions:**

EPC Art. 123(2), 56

**Keyword:**

Amendments - combination of features - multiple selections - allowable (no)  
Inventive step - (no - mere choice of convenient technology)

**Decisions cited:**

T 0641/00



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Case Number: T 1306/12 - 3.5.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.01**  
**of 12 July 2018**

**Appellant:** Visteon Global Technologies, Inc.  
(Applicant) One Village Center Drive  
Van Buren Township, MI 48111 (US)

**Representative:** Schwöbel, Thilo K.  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 10 February  
2012 refusing European patent application No.  
09006826.3 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** W. Chandler  
**Members:** A. Wahrenberg  
P. Schmitz

## Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse the European patent application 09006826.3 (published as EP2124177).
- II. The grounds for refusal were that the subject-matter of claim 1 of the main request and of auxiliary requests 1 and 2 extended beyond the content of the application as filed (Article 123(2) EPC), and that the subject-matter of claim 1 of auxiliary request 3 lacked an inventive step over the disclosure of D21 (US 2003/0127513 A).

In particular, the examining division considered that the feature (f1) in claim 1 of the main request and auxiliary requests 1 and 2, according to which *"from the point of sale an information related to a purchasing operation is transmitted by means of the wireless communication interface"*, was not directly and unambiguously derivable from the application as filed, neither on its own, nor in combination with the other claim features.

- III. The appellant requested that the decision to refuse the application be set aside and that a patent be granted on the basis of a main request or one of auxiliary requests 1 to 4. All requests were submitted with the statement setting out the grounds of appeal, but the main request and auxiliary requests 1 to 3 were identical to those before the Examining Division.
- IV. Claim 1 of the main request reads as follows:

*Automobile equipped with a reader to be placed inside of the automobile, wherein the reader is able to read*

*purchasing instrument data on a mobile phone, on which the purchasing instrument data are stored, the reader being further connected to a wireless communication interface of the automobile, wherein the wireless communication interface is a Bluetooth interface, the wireless communication interface being able to transmit the purchasing instrument data to a point of sale, wherein the automobile comprises a display device, wherein from the point of sale an information related to a purchasing operation is transmitted by means of the wireless communication interface and wherein the information related to the purchasing operation is displayed on the display device.*

- V. Auxiliary request 1 adds to the end of claim 1 of the main request:

*wherein the automobile is equipped with a GPS antenna and wherein a preselection of one of the plurality of purchasing instrument data depends on the position of the automobile.*

- VI. Auxiliary request 2 adds to the end of claim 1 of auxiliary request 1:

*wherein the reader is able to read purchasing instrument data of an NFC-enabled handset using near field communication (NFC).*

- VII. Claim 1 of auxiliary request 3 reads in full:

*Automobile equipped with a reader to be placed inside of the automobile, wherein the reader is able to read purchasing instrument data on an NFC-enabled handset, on which the purchasing instrument data are stored, the reader being further connected to a wireless*

*communication interface of the automobile, wherein the wireless communication interface is a Bluetooth interface, the wireless communication interface being able to transmit the purchasing instrument data to a point of sale, wherein the automobile is equipped with a GPS antenna and wherein a preselection of one of a plurality of credit/debit instruments depends on the position of the automobile, wherein the reader is able to read purchasing instrument data of the NFC-enabled handset using near field communication (NFC).*

VIII. Auxiliary request 4 replaces in claim 1 of auxiliary request 2 the expression "*information related to a purchasing operation*" by "*a price information*".

IX. The appellant's arguments can be summarised as follows:

Paragraph [0009] of the originally filed application disclosed that, according to all embodiments of the present invention, it was preferred that the automobile comprise a display device. Preferably, the display device displayed a price information which was transmitted by means of a wireless communication interface.

According to paragraph [0012] of the originally filed documents, it was preferred that on a display device of the automobile, especially the centre display of the automobile, information be displayed that was related to a purchasing operation. Such information was disclosed to include one or a plurality of the following information or part thereof:

- buying options
- payment amount/pricing information
- POI-related (point of interest related) menu options

- driving direction, e.g. to a POI (point of interest)
- ETA (estimated time of arrival) related information, e.g. to define order availability
- parking options like a menu of choices and/or of prices, directions to parking sites, time availability
- coupons available on the location of the automobile, especially relative to a point of sale.

The last item of paragraph [0012] clearly indicated that information related to a purchasing operation was transmitted from a point of sale by means of the wireless communication interface.

- X. The Board set out its provisional view on the case in a communication accompanying a summons to oral proceedings. In the Board's provisional view, none of the applicant's requests was compliant with Article 123(2) EPC. Although the Board considered it to be difficult to give a meaningful opinion on inventive step, because it was difficult to see what combination of features the appellant could claim in compliance with Article 123(2) EPC, the Board nevertheless gave an opinion on how it saw the prior art.
- XI. The appellant did not provide any new arguments in response to the Board's communication. Instead, the appellant informed the Board that nobody would attend the oral proceedings and withdrew the request for oral proceedings. The Board nevertheless held oral proceedings in the appellant's absence and announced its decision at the end.

## Reasons for the Decision

1. *Background*
- 1.1 The invention is about making purchases while being in a car. In particular, it is about communicating "purchasing instrument data" to a point of sale without distracting the driver's attention from traffic.
- 1.2 The application contains a number of different options for getting the purchase instrument data and transmitting it to the point of sale.
- 1.3 The purchase instrument data may be stored on a contactless credit card, a smart card-type credit card, or a NFC-enabled handset, for example a mobile phone (paragraph [0005]). It may be read by a "reader" placed inside the car, but there are also embodiments without a reader, for example, in which the data is received from the mobile phone via the car's Bluetooth interface (paragraphs [0024] and [0026]).
- 1.4 In the application, the reader is connected to the car's "wireless communication interface" that transmits the purchase instrument data to the point of sale. There are several options for the wireless communication interface (paragraph [0007]). In *all embodiments*, it is *preferred* that the wireless communication interface is a wide area communication interface, for example a GSM-interface, or a UMTS-interface. *Alternatively, it is also preferred* that the wireless communication interface is a short range communication interface, e.g. a NFC-interface (Near Field Communication), a Bluetooth interface, a WLAN-interface, or an interface according to the ISO 14443-



standard (contactless integrated circuit cards) or the ISO-15693 standard (vicinity cards).

1.5 Furthermore, in *all embodiments*, it is *preferred* that the car has a display device (paragraph [0009]). *Preferably*, the display device displays a price information which is transmitted by means of the wireless communication interface (paragraph [0009]). In paragraph [0012] it is *preferred* that the display device displays information "relating to a purchasing operation", for example, buying options, payment amount/pricing information, menu options, driving direction, ETA-related information, parking options, and coupons.

2. *Main request, claim 1*

2.1 Claim 1 of the main request defines a particular combination of features selected from the various options described in the application. There is a reader that can read purchasing instrument data stored on a mobile phone. The wireless communication interface is a Bluetooth interface. There is also a display that can show "information related to a purchasing operation" transmitted by the point of sale via the Bluetooth interface.

2.2 It is evident that the specific combination of features in claim 1 of the main request is not disclosed in one place in the application as filed.

The originally filed claims do not provide the combination.

In the description, the various options for the reader are set out in paragraph [0005], and to some extent in

paragraph [0010]. The options for the wireless interface are defined in paragraph [0007], and the display of information on a display is described in paragraphs [0009] and [0012].

Furthermore, none of the detailed embodiments comprises the whole combination of features in claim 1 of the main request. The embodiment shown in Figure 1 has a reader (1) for reading purchasing instrument data stored on a *credit card* (2). Figures 2 to 4 both show a reader (1) *and* a mobile phone (12), but there is no clear and unambiguous disclosure of an embodiment in which the reader is used for reading purchasing instrument data from the phone. It rather seems that the exchange of information goes entirely via the phone, or via the car's Bluetooth system.

- 2.3 It is established case law of the Boards of Appeal that an application cannot be used as a "reservoir" of optional features to be claimed in a pick-and-mix fashion (Case Law of the Boards of Appeal of the European Patent Office, eighth edition, II.E.1.4). There must be a specific indication in the application as filed that the claimed features belong together. Without such an indication, the combination provides new information beyond the application as filed. The same is true for the omission of features. Picking some features while leaving others out may also amount to new information.

The subject-matter of claim 1 is not just a simple combination of optional features. It involves multiple selections at different levels. The reader, which itself is described as an optional feature, is selected from among the list of options in paragraph [0005]; the wireless interface is selected from among the options

in paragraph [0007]; and, additionally, there is the display of information, which is also described as optional. Such multiple or multi-level selections are not allowable without a clear indication (Case Law of the Boards of Appeal of the European Patent Office, eighth edition, II.E.1.4.2).

- 2.4 The fact that features have been mentioned in the application as "preferred" may be seen as an indication that they belong to a preferred embodiment of the invention (Case Law of the Boards of Appeal of the European Patent Office, eighth edition, II.E.1.4). However, the Board does not see that the claimed combination of features corresponds to a specific, preferred embodiment of the originally disclosed invention.

The application as filed does not mention the use of a mobile phone for storing the purchasing instrument data as a preferred feature of the invention.

In paragraph [0007] of the published application, it is "preferred" that the wireless communication is a short range interface (but not necessarily Bluetooth). However, it is *also preferred*, in all embodiments, that the wireless communication interface is a wide area communication interface. Evidently, two mutually exclusive alternatives cannot be preferred at the same time.

Furthermore, the application mentions many features as preferred, which are not claimed.

- 2.5 In conclusion, the Board does not see a direct and unambiguous basis in the application as filed for the combination of features in claim 1 of the main request.

Therefore, the subject matter of claim 1 of the main request contravenes Article 123(2) EPC.

2.6 The examining division considered that the "information related to a purchasing operation" in claim 1 was an unallowable generalisation of the "price information" in paragraph [0009], and that the information related to a purchasing operation in paragraph [0012] was not disclosed as being transmitted by the point of sale via the Bluetooth interface. The Board agrees. The last item in paragraph [0012] refers to a location relative to a point of sale and not to a transmission of information from the point of sale. Thus, the subject-matter of claim 1 contravenes Article 123(2) EPC, also for that reason.

2.7 The main request is unallowable for the sole reason that claim 1 relates to subject-matter, which extends beyond the content of the application as filed (Article 123(2) EPC). However, the Board can also deal with the question of inventive step (Article 56 EPC). The question is relevant because, although it was not mentioned in the decision under appeal with regard to the main request, it had been a topic during the examination proceedings.

2.8 The Board agrees with the examining division that D21 is a suitable starting point for assessing inventive step. D21 (see the abstract) discloses means, inside an automobile, for reading purchasing instrument data from a credit card, and transmitting it wirelessly to a point of sale. It also discloses the use of a display for displaying information.

2.9 The Board agrees with the examining division's assessment in the communication dated 1 November 2011

(see point 3) that the invention as defined in claim 1 of the main request differs from D21 by a number of unrelated features:

- the purchasing instrument data is stored on a mobile phone;
- the wireless transmission is via a Bluetooth interface; and
- the display device displays information "relating to a purchasing operation" received from the point of sale via the Bluetooth interface.

The first feature concerns the choice of payment instrument and means for obtaining the purchasing instrument data. The second feature concerns the choice of wireless transmission means for transmitting the purchasing instrument data to the point of sale. The third features concerns the presentation of, for example, price information, provided by the point of sale, and the choice of means for receiving such information from the point of sale.

- 2.10 The Board considers that the choice of a reader or an NFC-enabled device for obtaining the purchasing instrument data from a mobile phone amounts to the choice of a convenient technology. NFC, for example, was developed for just such short range applications, and the application does not identify any particular advantage beyond being generally usable.
- 2.11 The choice of Bluetooth or other wireless technology for communication with the point of sale also amounts to the choice of convenient technology. The application

does not identify any particular one as providing a particular advantage.

- 2.12 Providing price information to the user is, as the examining division correctly assessed, not technical. It is presentation of information. The means for displaying the information is technical, but known from the prior art. The source of the information being the point of sale is not technical, either.

Non-technical features do not contribute to inventive step (see T 641/00 - "Two identities/COMVIK", OJ EPO 2003, 352). Instead, they are part of the problem to be solved in the form of a requirement specification given to the technically skilled person. Given the non-technical requirement of providing the user with price information from the point of sale, the skilled person would certainly have considered using the same communication means for receiving information from the point of sale as that used for transmitting information to the (same) point of sale. Furthermore, using a display device for displaying information is self-evident.

- 2.13 For these reasons, the Board judges that the subject-matter of claim 1 of the main request does not involve an inventive step (Article 56 EPC).

3. *Auxiliary request 1*

- 3.1 Claim 1 of auxiliary request 1 contravenes Article 123(2) EPC for the same reasons as given in respect of the main request.

In addition, the Board is unable to see any basis in the application as filed for a selection, or

"preselection", of a purchasing instrument in connection with a mobile phone, as required by the features of claim 1 of auxiliary request 1. When the application talks of selection, it is always between credit or debit cards (see, for example, paragraphs [0005] and [0022]).

4. *Auxiliary request 2*

- 4.1 The reasons why auxiliary request 1 relates to subject-matter, which extends beyond the application as filed (Article 123(2) EPC), apply equally to auxiliary request 2.

In addition, the additionally-defined "NFC-enabled handset" seems to be distinct from the mobile phone already defined in claim 1, and the Board can see no basis for this in the application as filed.

5. *Auxiliary request 3*

- 5.1 Claim 1 of auxiliary request 3 is significantly amended in comparison to claim 1 of the main request. For example, there is no mobile phone, but rather an NFC-enabled handset, and there is neither a display nor any transmission of "information related to the purchasing operation" from the point of sale.

However, claim 1 of auxiliary request 3 does comprise a combination of preselection of a payment instrument with an NFC-enabled handset for which the application as filed contains no basis (see point 3.1 above).

Furthermore, for the reasons set out in points 2.1 to 2.6 with regard to the main request, the Board does not see a direct and unambiguous basis in the application

as filed for the *specific* combination of a reader for reading purchasing instrument data from a NFC-enabled handset and the wireless interface being a Bluetooth interface.

For these reasons, the Board judges that also auxiliary request 3 relates to subject-matter, which extends beyond the application as filed Article 123(2) EPC.

5.2 The Board refrains from assessing the inventive step of the subject-matter of auxiliary request 3 because it is not meaningful to consider the merits of an invention that is not supported by any examples in the application as filed.

6. *Auxiliary request 4*

6.1 In claim 1 of auxiliary request 4, the "information related to a purchasing operation" in auxiliary request 2 is replaced by "price information". This amendment does not change the Board's conclusion that the claimed subject-matter extends beyond the content of the application as filed (Article 123(2) EPC).

## **Order**

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

The appeal is dismissed.



The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated