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**Datasheet for the decision  
of 10 February 2017**

**Case Number:** T 0145/13 - 3.4.03

**Application Number:** 04714101.5

**Publication Number:** 1634210

**IPC:** H01L27/00

**Language of the proceedings:** EN

**Title of invention:**

MONITORING AND AUTOMATIC EQUIPMENT CONTROL SYSTEMS

**Applicant:**

Gentex Corporation

**Headword:**

**Relevant legal provisions:**

EPC 1973 Art. 111(1)  
EPC R. 137(5), 164(2)

**Keyword:**

Amendments - amended claims relating to unsearched subject-  
matter (no)  
Remittal to the department of first instance - (yes)

**Decisions cited:**

T 0442/11, T 0507/11, T 1285/11, T 1981/12, T 0998/14

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 0145/13 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 10 February 2017**

**Appellant:** Gentex Corporation  
(Applicant) 600 North Centennial Street  
Zeeland, MI 49464 (US)

**Representative:** Müller-Boré & Partner  
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**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 27 August 2012 refusing European patent application No. 04714101.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** G. Eliasson  
**Members:** T. M. Häusser  
C. Heath

## Summary of Facts and Submissions

- I. The appeal concerns the decision of the examining division refusing the European patent application No. 04 714 101 for lack of inventive step (Article 56 EPC 1973) in relation to the former main request and the former second and third auxiliary requests. The former first auxiliary request was not admitted into the proceedings before the examining division under Rule 137(5) EPC as it related to unsearched subject-matter.
- II. Reference is made to the following document:
- D1: Ackland B et al: *Camera on a Chip*, 1996 IEEE International Solid-State Circuits Conference, Digest of Technical Papers, 42nd ISSCC, San Francisco, CA, USA, February 1996.
- III. The appellant (applicant) requested in writing (see letter dated 23 September 2016) that the decision under appeal be set aside and a patent be granted on the basis of the following documents:
- main request: the documents specified as "First Auxiliary Request" in section B.I. of the letter dated 21 December 2012 setting out the grounds of appeal,
  - first auxiliary request: the documents specified as "Second Auxiliary Request" in section C.I. of the letter dated 21 December 2012 setting out the grounds of appeal,
  - second auxiliary request: the documents specified as "Third Auxiliary Request" in section D.I. of the letter dated 21 December 2012 setting out the grounds of appeal.

Moreover, the appellant consented to the remittal of the case to the department of first instance for further search and examination.

IV. The wording of independent claim 1 of the main request is as follows:

"1. An automotive equipment control system (400, 1000), comprising:

at least one imager (405, 537, 637, 737, 737, 901) comprising at least one image sensor (765, 901) for acquiring an image;

a processor (930) configured to analyse the image, the processor being a field-programmable gate array; a main processor (420, 508, 808, 902, 1008) making a control decision in order to automatically perform a vehicle equipment related function based on information communicated from the processor (930) configured to analyze the image; and

an interconnection enabled to utilize LVDS to transmit data between the image sensor (765, 901) and the processor (930) for analysing the image,

wherein the automatic vehicle equipment control system is at least one of an adaptive cruise control, collision warning or avoidance, exterior light control imaging, blind spot warning and night vision."

V. In relation to the objection as to the amendments of the main request relating to unsearched subject-matter the appellant argued essentially as follows:

The features pointed out by the examining division related to a further limitation of the searched automotive equipment control system. Since this had been searched, the further limitations also had to be considered searched subject-matter. Hence, the claims

of the present main request had to be admitted into the proceedings (see part B.II. of the letter dated 21 December 2012 setting out the grounds of appeal).

## **Reasons for the Decision**

1. Main request

1.1 Rule 137(5) EPC

1.1.1 The claims of the main request are those of the first auxiliary request before the examining division. In the decision, the division held that this request was not accepted into the procedure for violation of Rule 137(5) EPC, because the features "adaptive cruise control", "collision warning or avoidance", "exterior light control imaging", "blind spot warning" and "night vision" of claim 1 of this request formerly constituted the fifth and unsearched invention as identified in the supplementary European search report (see point 5 of the decision).

1.1.2 The appellant argued that each of the features pointed out by the examining division related to a further limitation of the searched automotive equipment control system. Since this had been searched, the further limitations also had to be considered searched subject-matter. Hence, the claims of the present main request had to be admitted into the proceedings.

1.1.3 The board notes that, since the supplementary European search report of the application was drawn up after 1 April 2010, in the present case Rule 137 EPC in the version as amended with decision of the Administrative Council of 25 March 2009 applies (OJ EPO 2009, 299).

The first sentence of Rule 137(5) EPC in this version is identical with Rule 86(4) EPC 1973, which was introduced into the Implementing Regulations of the EPC in order to avoid that an applicant switches - e. g. by way of incorporating a feature from the description - to unsearched subject-matter *which was not claimed at the search stage* (see the decision T 442/11 of the Boards of Appeal, Reason 2.2.2).

However, in the present case the subject-matter of claim 1 of the main request corresponds essentially to the combination of the features of claims 7, 8, and 30 underlying the supplementary search report (filed with the entry into the European phase on 21 September 2005). Therefore, the claims cannot be considered as having been amended in such a way that they relate to unsearched subject-matter which does not combine with parts of the originally *claimed* invention to form a single general inventive concept. Rule 137(5) EPC is therefore not contravened.

This is in line with the reasoning of the decisions of the Boards of Appeal T 507/11 (see Reasons 1.1 to 1.3), T 1285/11 (see Reason 2), T 1981/12 (see Reasons 4.1 to 4.5), and T 998/14 (see Reasons 1.1 to 1.3) dealing with similar circumstances.

## 1.2 Rule 164(2) EPC

1.2.1 The board further notes that for the present Euro-PCT application, Rule 164(2) EPC is also relevant, namely in the version as amended with decision of the Administrative Council of 27 October 2009, which applies to the present case (OJ 2009, 582).

It is the intention of the second alternative of Rule 164(2) EPC to prevent the applicant from switching during the grant proceedings from searched subject-matter to subject-matter which had originally been claimed but not searched due to non-payment of the additional search fee (see T 442/11, Reason 2.3.2).

- 1.2.2 As indicated above, the subject-matter of claim 1 of the first auxiliary request corresponds essentially to the combination of the features of claims 7, 8, and 30 underlying the supplementary search report, which was attributed in the supplementary European search report to the fifth invention and thus not searched.

Therefore, it has to be assessed whether it was justified not to search said fifth invention in preparation of the supplementary European search report. In the decision there is no justification in this respect (see point 5 of the Reasons). In "Sheet B" of the supplementary search report the claims were considered to lack unity *a posteriori* in view of document D1, which was considered to disclose the subject-matter of claim 1.

Claims 1-3, 7-11, 17-21, 23-29, 36, 37, 40, 41, 49, and 50 underlying the supplementary search report were attributed to the first invention with the special technical feature of a dual port memory specified in claim 2, which was considered to solve the objective technical problem of providing "a transceiver with a memory so that it can be accessed at two ports".

Claims 30-35, 42, 45 underlying the supplementary search report were attributed to the fifth invention with the special technical feature of a device type to be controlled by the automatic vehicle control system,



which was considered to solve the objective technical problem of providing an "automatic vehicle control system which is able to control a device of a special type".

With reference to document D1, page 25, right-hand column, paragraph 5, document D1 was considered to disclose an automatic vehicle equipment control system. In the cited paragraph the following is stated: "As the CMOS image sensor array technology evolves, and process line widths continue to decrease, *we expect to see* [...] (5) low-cost, low-resolution sensors that allow intelligent machine vision functions to be added to consumer items such as automobiles and home appliances" (emphasis by the board). This statement is merely an outlook on various possible future developments. There is no enabling disclosure in document D1 concerning these conjectured developments at all. Moreover, it is not even mentioned what role the sensors could play in the automobile, in particular there is no indication that the sensors could be used in a vehicle equipment control system. Document D1 is therefore not considered to disclose an automatic vehicle equipment control system. This feature can therefore be considered an inventive concept joining the first and fifth invention as subdivided in "Sheet B" of the supplementary search report.

Therefore, it cannot be considered justified that the fifth invention indicated in the supplementary search report was not searched in preparation of the European supplementary search.

- 1.2.3 Consequently, the provisions of Rule 164(2) EPC cannot be invoked against the amendments in relation to the

claims of the main request, either (see also T 442/11, Reasons 2.3 and 2.4).

2. Conclusion

In view of the above, the application is to be remitted to the examining division (Article 111(1) EPC 1973) for further prosecution involving, if necessary, a further search.

**Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated