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**Datasheet for the decision
of 4 December 2018**

Case Number: T 0713/13 - 3.5.02

Application Number: 08162637.6

Publication Number: 2009609

IPC: G08G1/00

Language of the proceedings: EN

Title of invention:

Instantaneous traffic monitoring system

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Main request and first to sixth auxiliary requests - admitted
(no)
Amendments - seventh to tenth auxiliary requests - allowable
(no)

Decisions cited:

G 0001/99



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Case Number: T 0713/13 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 4 December 2018

Appellant: INRIX UK Limited
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Appellant: Be-Mobile Tech NV
(Opponent) Kardinaal Mercierlaan 1a
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Representative: IP HILLS NV
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Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
22 January 2013 concerning maintenance of the
European Patent No. 2009609 in amended form.

Composition of the Board:

Chairman R. Lord
Members: H. Bronold
R. Cramer

Summary of Facts and Submissions

- I. The appeal lies from the interlocutory decision of the opposition division that European Patent No. 2 009 609 could be maintained in amended form on the basis of the claims of the then first auxiliary request.
- II. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- III. The respondent (patent proprietor) initially also filed an appeal in due form and time, which they later withdrew. They requested that the decision under appeal be set aside and that the patent be maintained as granted, or if that was not possible, that the patent be maintained in amended form on the basis of one of their first to tenth auxiliary requests, all filed together with their statement setting out the grounds of appeal. The claims of the seventh auxiliary request are identical to the claims of the first auxiliary request underlying the contested decision. This request may therefore be interpreted as being a request to dismiss the appeal of the appellant.
- IV. In a communication under Article 15(1) RPBA the board had informed the parties *inter alia* that it considered the seventh to tenth auxiliary requests to be inadmissibly amended and therefore to contravene Article 123(2) EPC.
- V. With fax of 13 September 2018 the respondent withdrew their appeal and with fax dated 10 October 2018 they requested that the oral proceedings be cancelled.

VI. With a communication dated 16 October 2018, the board notified the parties that the oral proceedings appointed for 18 October 2018 had been cancelled.

VII. Independent claim 1 of the seventh auxiliary request according to the feature designation as in section 1.9 of the decision in suit, which the board adopts for this decision, reads as follows:

"A traffic monitoring system (10) comprising:

a) a plurality of monitoring electronic devices (20) located in different motor vehicles (12) travelling on various roadways (14-17) throughout a selected region;

b) a movement information means coupled to each monitoring electronic device (20) capable of instantaneously establishing movement information of the monitoring electronic device (20) at any time while driving;

c) a wireless communication means coupled to each monitoring electronic device (20) that enables the monitoring electronic device (20) to connect to a wide area computer network;

d) a central computer (60) connectable to the wide area network,

d1) and arranged to receive the movement information from the plurality of monitoring electronic devices (20) and

d2) to process the movement information to create a traffic congestion database (64) for the selected region,

d3) and to receive requests from the authorized users for traffic information, the request including a request for current traffic information on roadways, alternative to the present roadway,

e) and further to recommend specific lanes of traffic on a multiple lane roadway."

VIII. The independent claims according to the eighth and ninth auxiliary requests both comprise the following feature :

"a request for current traffic information on roadways on alternative routes, alternative to the present roadway on their current route."

The independent claim according to the tenth auxiliary request differs from those of the eighth and ninth auxiliary request only in that "current route" is replaced by "present route".

IX. The arguments of the appellant, as far as they are relevant for this decision, can be summarised as follows:

There was no basis for feature e) in the originally filed application. Feature e) was taken out of its originally disclosed context such as for example a movement information means or a roadway specific database, etc.

All of the requests of the respondent thus contravened Article 123(2) EPC.

- X. The arguments of the respondent, as far as they are relevant for this decision, can be summarised as follows:

Claim 1 according to the seventh auxiliary request did not violate Article 123(2) EPC. In particular, feature e) was disclosed in column 4, lines 4 and 5 and column 3, lines 19 to 22 of the patent.

Reasons for the Decision

1. The appeal was filed in due time and form and is therefore admissible.

2. Oral proceedings (Article 116 EPC)

The respondent requested that the oral proceedings scheduled before the board be cancelled. The board interprets this request as a withdrawal of the respondent's request for oral proceedings.

The appellant had not requested oral proceedings.

Thus, there was no need for the board to hold oral proceedings.

3. Requests of the respondent (admissibility)

With fax of 13 September 2018 the respondent withdrew their appeal. Therefore, requests of the respondent

going beyond the subject-matter of the claims underlying the contested would be contrary to the principle of prohibition of reformatio in peius.

The independent claims according to the main request and according to the first to sixth auxiliary requests of the respondent all lack feature e) reading "and further to recommend specific lanes of traffic on a multiple lane roadway."

Admitting any of these requests of the respondent into the appeal proceedings would therefore have worsened the legal position of the appellant, contrary to the prohibition of reformatio in peius, see the decision of the Enlarged Board of Appeal G 1/99 (OJ 2001, 381), order, first sentence. The exception mentioned in the order of G 1/99 does not apply in the present case.

Consequently, the main request and the first to sixth auxiliary requests are not admitted into the proceedings.

4. Amendments (Article 123(2) EPC)

The appellant alleges that there is no original disclosure for feature e) which reads

"and further to recommend specific lanes of traffic on a multiple lane roadway."

- 4.1 There is no valid basis for feature e) in the originally filed application. The reasons for this conclusion are the following:

Although feature e) is mentioned in column 4, lines 4 and 5 as well as column 3, lines 19 to 22 of the description [of the granted patent], it is taken out of its original context. According to the corresponding paragraph [0018] of the granted patent (or paragraph [0017] of the A2-publication) the central computer monitors the progress of the user and the traffic conditions ahead of the user. Further, recommended specific lanes of traffic have to be moving faster. None of these associated features can be found in claim 1 according to the seventh auxiliary request.

Consequently, the board concludes that feature e) constitutes an intermediate generalisation of the original disclosure and claim 1 according to the seventh auxiliary request therefore contravenes Article 123(2) EPC.

4.2 The claims according to the eighth to tenth auxiliary requests contain an amended feature d3) defining:

a request for current traffic information on roadways on alternative routes, alternative to the present roadway on their current/present route (emphasis added by the board).

The appellant argues, that amended feature d3) was not originally disclosed. The board agrees with the appellant.

Due to the amendments to feature d3), the terms *present roadway* and *alternative roadways* are defined as forming parts of different routes, namely the *current route* or *present route* on the one hand and *alternative routes* on the other hand.

The board has not been able to find a basis for such an amendment in the originally filed application. The corresponding parts of the description disclose on page 4, lines 17 to 20 that "once a user has chosen a route and made his or her choice known to the system, the central computer can monitor his or her progress and the traffic conditions ahead of the user, and recommend alternative roadways...." and on page 11, line 37 and page 12, line 1 that "The system 10 may also be used to recommend alternative roadways to users along a particular route...". Consequently, the recommendation of alternative roadways according to the original disclosure of the patent relates to the same route, namely the *current route* or *present route*.

Thus, there is no basis for the above mentioned amendments to feature d3) according to the eighth to tenth auxiliary requests in the originally filed application. Therefore, the eighth to tenth auxiliary requests contravene Article 123(2) EPC.

- 4.3 As a consequence of the above considerations on amendments, none of the seventh to tenth auxiliary requests is allowable.

5. Since none of the admissible auxiliary requests of the respondent is allowable, the board has to accede to the request of the appellant to revoke the patent.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated