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**Datasheet for the decision  
of 10 December 2018**

**Case Number:** T 0846/13 - 3.5.02

**Application Number:** 05760570.1

**Publication Number:** 1763858

**IPC:** G08B15/00, F21S8/08, G08G1/00

**Language of the proceedings:** EN

**Title of invention:**

Lighting Apparatus with Integrated Warning Equipment and Data  
Collection Equipment

**Patent Proprietor:**

Fucci, Massimo

**Opponent:**

Siteco Beleuchtungstechnik GmbH

**Relevant legal provisions:**

EPC 1973 Art. 100(c), 123(3)  
RPBA Art. 13(1)

**Keyword:**

Amendments - extension beyond the content of the application  
as filed (yes)

Late-filed auxiliary requests - request clearly allowable (no)  
- broadening and shift of scope of protection - admitted (no)

Change of representative does not normally justify late filing



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Case Number: T 0846/13 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 10 December 2018**

**Appellant:** Siteco Beleuchtungstechnik GmbH  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 8 February 2013  
rejecting the opposition filed against European  
patent No. 1763858 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** R. Lord  
**Members:** F. Giesen  
J. Hoppe

## Summary of Facts and Submissions

I. This appeal by the opponent (hereinafter "appellant") lies from the decision of the Opposition Division rejecting the opposition filed against European patent No. 1763858.

II. Oral proceedings were held before the board on 10 December 2018.

The appellant requested that the decision under appeal be set aside and the patent be revoked.

The final requests of the patent proprietor (hereinafter "respondent") were that the appeal be dismissed (main request) or, if that was not possible, that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the claim according to auxiliary request IV filed during the oral proceedings.

III. The main request contains a single claim, which reads as follows:

*"A road lighting system, comprising a remote data processing station and a plurality of road lighting apparatuses positioned along the same road, each road lighting apparatus including:*

- a case (12) containing a lighting source (13),*
- data collection equipment (19), including sensors measuring the speed of vehicles driving along the road lit by the apparatus and environmental sensors, or alternatively the data collection equipment including a cctv camera (19),*

- warning equipment (18), including warning lights in different colours arranged at the front end of the apparatus in order to be seen by passers-by, the warning equipment and data collection equipment being situated at least partly inside the case of the lighting apparatus, and

- transmission equipment arranged to transfer the collected data to said remote data processing station, characterized in that

said remote data processing station is arranged to monitor the data collected from the plurality of lighting apparatuses and to centrally control the warning equipments of the plurality of lighting apparatuses based on the collected data."

Printing errors that were present in the published patent specification but not in the text on which the grant decision was based have not been reproduced here.

IV. Auxiliary Request IV contains a single claim, which reads as follows:

"A road lighting system, comprising a remote data processing station and a plurality of road lighting apparatuses positioned along the same road, each road lighting apparatus including:

- a external case (12) containing a lighting source (13),

- warning equipment (18), including warning lights in different colours arranged at the front end of the apparatus in order to be seen by passers-by, the warning equipment and data collection equipment being

*situated at least partly inside the case of the lighting apparatus,*

*- one lighting apparatus including further*

*- data collection equipment (19), including a cctv camera or, alternatively a speed sensor measuring the speed of vehicles driving along the road lit by the apparatus or an environmental sensor,,*

*- transmission equipment arranged to transfer the collected data to said remote data processing station,*

*characterized [sic] in that*

*the warning lights are separated light sources from the light source (13)*

*and the front end being the lower edge of the case at the end of the case opposite to an end of the case secured to a post*

*said remote data processing station is arranged to monitor the data collected from the plurality of data collection equipment (19) of the said one lighting apparatus and to centrally control the warning equipments of the plurality of lighting apparatuses based on the collected data."*

V. The submissions of the appellant, in as far as they are relevant for the present decision, can be summarised as follows:

The subject-matter of the European patent extended beyond the content of the application as filed due to

the amendments to claim 1 in the granted version. The combination of speed sensors and environmental sensors in a lighting apparatus was not originally disclosed. The passage on page 3, lines 6 ff. was merely a list of alternatives. If it had been intended to disclose a combination of the listed sensors, then "and/or" would have been used instead of "or, alternatively" and "or". The expression "or, alternatively" applied to all list items following it, thus excluding their combination. In addition, this passage did not provide a basis for singling out the particular subset of sensors claimed. The passage on page 4, lines 20 to 21 concerned monitoring access to restricted areas, measure driving speed and collect environmental data or other information. Therefore, this passage did not provide a basis for singling out the combination of speed and environmental sensors either. In addition it was unclear whether it referred to a lighting apparatus having a CCTV camera, which could be used to monitor areas, measure speed and environmental conditions, or whether it referred to a lighting apparatus having the claimed combination of speed and environmental sensors. The passage on page 1, lines 8 to 13 also did not provide a basis for the amendment. From the enumeration of dangerous traffic situations, such as accidents, queues, icy or slippery road conditions, road works along with monitoring access to restricted or private areas and measuring driving speed, a combination of speed and environmental sensors was not directly and unambiguously derivable.

Auxiliary request IV was not to be admitted. The amendments to the claim were *prima facie* not allowable since they did not meet the requirements of Article 123(3) EPC. The amended claim no longer required the combination of speed and environmental sensors, but

instead defined each sensor type as an alternative. Also the plural was changed to a singular, so that now less than two sensors of each type were claimed, whereas in the granted version at least two of each sensor type were claimed. According to the amended claim only one lighting apparatus of the road lighting system was required to have data collection equipment, whereas in the granted claim each lighting apparatus was required to have data collection equipment. Consequently, in the amended version data from only one lighting apparatus were transmitted to the remote data processing station, whereas previously data from all lighting apparatus was transmitted. The amendments therefore caused the scope of protection to be extended.

VI. The submissions of the respondent, in as far as they are relevant for the present decision, can be summarised as follows:

The appellant took passages of the description out of their general context. The passage on page 3, lines 6 to 9 started with the words "could include". From this it followed, that the list that followed consisted of non-exclusive alternatives. Contrary to this, the expression "or, alternatively" used in the list indicated an exclusive alternative. This exclusive alternative applied, however, only to the CCTV camera, as can be seen from the following considerations. The passage on page 1, lines 8 to 13 indicated that measuring speed and environmental conditions were not exclusive alternatives. The same was true for the passage on page 4, lines 20 to 21, which stated that the data collection equipment can monitor access to restricted areas, measure driving speed and collect



environmental data, i.e. they were connected with an "and". Furthermore, technically speaking, a CCTV camera could be used to measure both speed and environmental conditions. This explained why in the passage on page 3 a CCTV camera was presented as an exclusive alternative by using the expression "or, alternatively", whereas speed and environmental sensors were presented in combination, by using merely commas to separate them. This passage had to be construed with technical understanding. A speed sensor was not an alternative, but rather a complement to an environmental sensor, whereas a CCTV camera was a true alternative to the combination of a speed sensor and an environmental sensor.

The sole claim of auxiliary request IV should be admitted. A late change of the representative justified the late filing, which was also accepted in some Board of Appeal decisions. It was *prima facie* allowable, *inter alia*, because it represented a limitation of the scope of protection as further features regarding details of the warning lights including its separation from the lighting source had been added to it. Furthermore the scope of protection was reduced to one sensor only.

## **Reasons for the Decision**

1. The appeal is admissible.
  
2. *Article 100(c) EPC*
  - 2.1 The main passage adduced by both parties with respect to the definition of speed sensors and environmental sensors is the sentence on page 3, lines 6 to 9 (in the following citations refer to the application as originally filed), which reads "The data collection equipment 19 could include a cctv camera or, alternatively, a speed sensor [...], an environmental sensor (to measure temperature, humidity, pressure, ice presence, etc.), a doppler radar or other types of sensors."
  
  - 2.2 The examination as to whether certain subject-matter is directly and unambiguously derivable is not a linguistic exercise alone, but has to take into account both the actual wording and the technical content as well as all other relevant circumstances to decide what was directly and unambiguously derivable.
  
  - 2.3 Linguistically, on a first reading the cited passage contains merely a list of sensors that could be included in the data collection equipment without singling out any specific item from the list or any specific sub-combination of items. The introductory formulation "could include" merely means that the data equipment is not restricted to any of the listed sensor types or camera, without making any statement about

whether what follows are exclusive or non-exclusive alternatives.

Even if one considered, *arguendo*, that the respondent's view were correct, and the "or, alternatively" indeed did separate the CCTV camera from the rest of the list, there would still be a number of reasonable possibilities how the passage could be understood:

- The data collection equipment could have a single speed sensor.
- It could have a single environmental sensor.
- It could have a single Doppler radar.
- It could have a single speed sensor and a single environmental sensor in combination.
- It could also have more than one environmental sensor measuring any of temperature, humidity, pressure, ice presence.
- It could have more than one environmental sensor in combination with a speed sensor.
- The speed sensor could be a Doppler radar.

Linguistically, therefore, the passage is ambiguous and can by itself not serve as a basis for the amendment.

2.4 The respondent submitted that from the technical content of the passage it was possible to derive the claimed sensor combination directly and unambiguously because a CCTV camera could be used to measure both speed and environmental conditions. It was therefore a true exclusive alternative to the combination of a speed and environmental sensor.

The Board is not convinced by this argument for the following reasons:

Normally, all a CCTV camera does is to take pictures. A skilled person when reading that passage would not

consider a CCTV camera as an alternative to the combination of a speed sensor and an environmental sensor. There is absolutely no disclosure in the present application of how a CCTV camera could measure speed of some object or how it could measure environmental conditions, such as temperature or humidity. This clearly goes beyond what a skilled person would be able to derive from the application using just his normal skill. Using his normal skill, he would merely understand a CCTV camera to be used in the conventional way, which is to monitor photographically a certain area, as is for example expressed on page 1, line 11 and page 4, line 20 ("monitor access to restricted areas").

Therefore, there is also technically nothing in that passage that would allow the skilled reader to deduce that the particular combination of speed and environmental sensors is to be singled out from the list.

- 2.5 Considering in combination the technical content of that passage and its linguistic presentation casts further doubt on whether a skilled reader would have understood the combination of speed sensors and environmental sensors to be disclosed there. This is because, linguistically, a Doppler radar is presented alongside a generic speed sensor in exactly the same manner as the environmental sensor, namely merely separated by a comma. This, according to the respondent, indicated the disclosure of a combination or at least non-exclusive alternative, on the assumption that the expression "or, alternatively" did not apply. Technically, however, a Doppler radar is a specific kind of speed sensor. Hence technically it makes little sense to present a Doppler radar as a

combination or non-exclusive alternative together with a generic speed sensor. If the linguistic presentation had been carefully chosen to reflect some underlying hierarchy or grouping, then the Doppler radar should have been marked linguistically as a species of the genus speed sensor, in the same way that for example a temperature sensor was marked as a species of the genus environmental sensor by putting in brackets "temperature" behind the expression "environmental sensor". Since this was not done, it appears to show that the expression "or, alternatively" was intended to apply to the list items speed sensor and Doppler radar and thus actually, to all the following listed items, the expression just not having been repeated every time.

- 2.6 The only conclusion that a skilled person can therefore draw from this passage is that no particular care seems to have been taken in formulating this passage such as to reflect with precision any information concerning the hierarchy or grouping of the listed items. The list would rather be understood by a skilled reader as an unstructured enumeration of possible data collecting equipment without implying any hierarchy or grouping.
- 2.7 The passage on page 1, lines 8 to 12 is similar in that respect. It contains an enumeration of situations that the lighting apparatus might monitor, but no grouping or hierarchy is apparent, either technically or linguistically. The respondent submits that this passage indicated a disclosure of speed and environmental sensors in combination. This fails to convince the Board. This passage could equally likely be seen to support, for example, the combination of a speed sensor with a CCTV camera, since the list includes the items "measure driving speed" and

detecting "queues" or "road works". There is thus scope in this passage, linguistically as well as technically, for a great number of combinations other than a speed sensor and an environmental sensor. Therefore, this passage merely lists possible conditions that can be monitored in an unstructured way and without thereby singling out the combination of speed sensors and environmental sensors.

2.8 This is also true for the sentence on page 4, lines 20 to 21, according to which the "data collection equipment can monitor access to restricted areas, measure driving speed and collect environmental data or other information". All three list items are, by their nature, very different kinds of information and the Board cannot discern, either from the structure of the sentence, or from its technical content, that a combination of speed and environmental sensors should be singled out.

2.9 Summarising, the Board observes that its interpretation of all three passages leads to a consistent picture, in that all three passages merely provide the same unstructured list of potentially useful detection equipment (a CCTV camera, speed sensors, and environmental sensors), or the situations this equipment could potentially monitor (by visual monitoring, such as access to areas, accidents, queues, road works; by detecting speed; by detecting environmental conditions such as temperature, humidity, pressure, icy or slippery roads).

2.10 Since the disclosure in all adduced passages leaves open several equally likely interpretations, there is no clear and unambiguous disclosure of the combination of speed sensors and environmental sensors.

2.11 The ground of opposition pursuant to Article 100(c) EPC thus prejudices the maintenance of the patent.

3. *Article 13 RPBA (Admissibility of auxiliary request IV)*

3.1 According to Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA), any amendment to a respondent's case after they have filed their reply to the grounds of appeal may be admitted and considered at the Board's discretion. It further provides that the discretion should be exercised in view of *inter alia* the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy. According to established jurisprudence of the Boards of Appeal relating to these criteria, requests filed shortly before or during oral proceedings, may be refused if they are not clearly allowable.

3.2 Auxiliary request IV was filed during the oral proceedings before the Board. The Board thus has a discretion as to its admittance.

3.3 The Board exercises its discretion *inter alia* in view of the *prima facie* allowability of the proposed amendments, in particular in view of the requirements of Article 123(3) EPC.

3.4 Claim 1 as granted was limited to a road lighting system, comprising a plurality of road lighting apparatus including data collection equipment including sensors measuring the speed of vehicles and environmental sensors. According to claim 1 of auxiliary request IV, the data collection equipment

includes a CCTV camera or, alternatively a speed sensor measuring the speed of vehicles or an environmental sensor.

This means that the granted subject-matter was limited in its broadest form to a combination of more than one speed sensor and more than one environmental sensor. The amended subject-matter is, in its broadest form, only limited to either one speed sensor or in the alternative to only one environmental sensor.

The road lighting system according to the granted claim was limited to each of its lighting apparatus including data collection equipment, whereas according to the amended claim only one of its lighting apparatus includes data collection equipment.

The road lighting system according to the granted claim was limited to its remote data processing station to monitor data collected from the plurality of data collection equipment whereas according to the amended claim its remote data processing station only monitors data from one data collection equipment.

- 3.5 While the subject-matter might have been limited in other aspects concerning the arrangement of the warning lights, clearly limitations that were present in the granted claim version regarding the number and presence of sensors and data equipment are now relaxed by the amendment. The Board notes in particular that changing from more than one sensor to just one sensor, is not a limitation of scope, as the respondent argued, but rather an extension of scope.

It follows that the amendments introduce a shift in the scope of protection, so that the amended scope of



protection would now cover embodiments which were not covered by the patent as granted (and *vice versa*). Consequently, the amendments *prima facie* do not meet the requirements of Article 123(3) EPC.

- 3.6 Furthermore, the Board is of the opinion that filing the amendments at this stage of the procedure is not justified, for the following reasons. Firstly, the amendments address objections which had not freshly arisen, but were instead already known to the respondent. Secondly, the mere fact that the representative had changed recently cannot justify the late filing. Rather, a new representative is obliged to continue the proceedings from the stage they were in before the change (see Case Law of the Boards of Appeal, 8th edition, 2016, IV.C.1.3.18) in order to guarantee procedural economy and fairness by preventing use of a change of representative as a means to have late-filed submissions admitted.
4. Since the opposition ground under Article 100(c) EPC prejudices the maintenance of the European patent and since the sole auxiliary request was not admitted into the proceedings, the Board has to accede to the request of the appellant.

**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