Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 28 September 2015

Case Number: T 0113/14 - 3.2.01

Application Number: 11002541.8

Publication Number: 2375103

IPC: B60K6/48, B60K6/445, F16H3/54, B60W20/00

Language of the proceedings: EN

Title of invention:
Vehicular drive system

Applicant:
TOYOTA JIDOSHA KABUSHIKI KAISHA

Headword:

Relevant legal provisions:
EPC Art. 111(1)

Keyword:
Remittal to the department of first instance - (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0113/14 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 28 September 2015

Appellant: (Applicant)	TOYOTA JIDOSHA KABUSHIKI KAISHA 1, Toyota-cho, Toyota-shi, Aichi-ken, 471-8571 (JP)
Representative:	Kuhnen & Wacker Patent- und Rechtsanwaltsbüro Prinz-Ludwig-Straße 40A 85354 Freising (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 13 August 2013 refusing European patent application No. 11002541.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	W. Marx
	P. Guntz

Summary of Facts and Submissions

I. The appeal is directed against the decision of the Examining Division posted on 13 August 2013 refusing European patent application No. 11 002 541.8.

II. The Examining Division issued a communication under Rule 71(3) EPC dated 8 May 2013 informing the applicant that it intended to grant a European patent on the basis of the auxiliary request 1 and that the subject-matter of claim 1 of the main request was not novel. Following this communication, the applicant requested the issuance of a decision under Article 97(2) EPC. In the contested decision, the Examining Division held that the subject-matter of claim 1 according to the main request was not new.

III. With its statement of grounds of appeal, the appellant (applicant) filed a main request and five auxiliary requests. Claim 1 of the main request corresponded to claim 1 of the main request underlying the impugned decision.

IV. In a communication pursuant to Rule 100(2) EPC, dated 23 June 2015, the Board expressed the preliminary opinion that it shared the view of the Examining Division that the subject-matter of claim 1 of the main request was not novel. The Board also considered that the first to third auxiliary requests presented further deficiencies and pointed out its intention to remit the case to the department of first instance according to the fourth auxiliary request because it corresponded to the auxiliary request of the contested decision which the Examining Division intended to grant (see point 5.1 of the communication).

V. With letter dated 2 September 2015, the appellant filed a main request including a single claim and withdrew all other requests, the main request corresponding to the the fourth auxiliary request filed with the statement of grounds of appeal.
The appellant requested to grant a patent on the basis of this sole request and auxiliarily to appoint oral proceedings if grant could not be decided in written proceedings.

VI. The appellant was informed (see minutes of telephone conversation on 7 September 2015) that the Board maintained its intention to set the decision aside and remit the case to the Examining Division for further prosecution according to the sole request. The appellant gave his consent on the remittal with letter dated 10 September 2015.

VII. The single claim according to the sole request reads as follows (differences with respect to claim 1 of the auxiliary request 1 referred to in the communication under Rule 71(3) EPC of the Examining Division outlined by the Board):

"A control device for a **hybrid** vehicular drive system (10, 70, 80, 92, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220) arranged to transmit an output of an engine (8) to a drive wheel (38) of a vehicle, **characterized by** comprising:
a transmission mechanism of switchable type switchable between a continuously-variable shifting state in which the transmission mechanism is operable as an electrically controlled continuously variable transmission, and a step-variable shifting state in which the transmission mechanism is operable as a step-variable transmission;

wherein said transmission mechanism of switchable type includes a power distributing mechanism (16, 84, 94) including a differential mechanism having a first element (RE1) fixed to said engine (8), a second element (RE2) fixed to a first electric motor/generator (M1), and a third element (RE3) fixed to a second electric motor (M2) and a power transmitting member (18); and

wherein said power distributing mechanism (16, 84, 94) includes a differential-state switching device (C0, BO) operable to place said transmission mechanism of switchable type selectively in said continuously-variable shifting state and said step-variable shifting state;

switching control means (159) for placing said transmission mechanism of switchable type selectively in one of said continuously-variable shifting state and said step-variable shifting state, on the basis of a predetermined condition of the vehicle;

said switching control means (159) being operable to control said differential-state switching device (C0, B0), so as to place said transmission mechanism selectively in said continuously-variable shifting state and said step-variable shifting state;

wherein said predetermined condition of the vehicle includes a **first** predetermined upper limit of a running speed of the vehicle;

wherein said switching control means (159) is operable to place the transmission mechanism of switchable type in said step-variable shifting state, when an actual value of the running speed of the vehicle has exceeded said **first** predetermined upper limit;

wherein said vehicular drive system (10, 70, 80, 92, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220) includes the differential mechanism operable to distribute an output of the engine (8) to said first

electric motor/generator (M1) and said power transmitting member (18), and a second electric motor (M2) disposed in a power transmitting path between the power transmitting member (18) and a drive wheel (38) of a vehicle, ~~characterised by~~ comprising:
said differential-state switching device (C0, B0) operable to place said differential mechanism selectively in a differential state in which the differential mechanism is operable as an electrically controlled continuously variable transmission, and a step-variable shifting state in which the differential mechanism is operable as a step-variable transmission;
characterized by
a first control map which defines, with predetermined control parameters, a plurality of regions for effecting a drive-power-source selection control to select at least one drive power source to be operated to generate a drive force, from among said engine (8), said first electric motor/generator (M1) and said second electric motor (M2); and
a second control map which defines, with the same control parameters used for said first control map, a differential region in which the differential mechanism is placed in said differential state by said differential-state switching device (C0, B0), and a non-differential region in which the differential mechanism is placed in said non-differential state by said differential-state switching device (C0, B0)."

Reasons for the Decision

1. The appeal is admissible.

2. The main (sole) request on file of the appellant substantially corresponds to the auxiliary request 1 on the basis of which the Examining Division announced its intention to grant a patent with the communication under Rule 71(3) EPC dated 8 May 2013. Claim 1 under consideration differs from claim 1 in accordance with the communication under Rule 71(3) EPC only by the amendments outlined in point VII above. The introduction of the term "first" in respect of the feature "predetermined upper limit of a running speed of the vehicle" only implies a denomination for this feature and the insertion/deletion of the expression "characterized by" is purely of formal nature (it is noted however, that the claim includes twice the expression "characterized by"). Furthermore, the introduction of the term "hybrid" for the vehicular drive system only seems to render explicit a feature which is already implicitly present in claim 1, as it recites an engine and electric motors.

   Considering that the Examining Division has already expressed a positive opinion on the subject-matter of claim 1 by issuing the communication under Rule 71(3) EPC, that the Board sees no reason to question this opinion, and that the appellant agrees with the remittal to the department of first instance, the Board decides to exercise its discretion pursuant to Article 111(1) EPC to remit the case to the Examining Division for further prosecution.

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 on the basis of the request submitted with letter dated 2 September 2015.

The Registrar: The Chairman:

I. Aperribay G. Pricolo

Decision electronically authenticated