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Datasheet for the decision of 15 July 2019

Case Number: T 1122/14 - 3.5.02

Application Number: 06836330.8

Publication Number: 1952618

IPC: G07B15/02

Language of the proceedings: EN

Title of invention:
System, method, and computer readable medium for billing based on a duration of a service period

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Amendments - extension beyond the content of the application as filed - intermediate generalisation (yes)

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Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1122/14 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 15 July 2019

Appellant: (Applicant)	Rent-a-Toll, Ltd. 2081 Hutton Drive, Suite 201 Carrollton TX 75006 (US)
Representative:	Stump, Beat Stump & Partner AG Zimmergasse 16 8008 Zürich (CH)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 10 December 2013 refusing European patent application No. 06836330.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	R. Lord
Members:	C. Vassoille
	R. Cramer

Summary of Facts and Submissions

I. The applicant (appellant) filed an appeal against the decision of the examining division to refuse European patent application no. 06 836 330.8, which is based on the international application published under the PCT as WO 2007/044960 A2.

II. In the decision under appeal, the examining division came to the conclusion that the subject-matter of claim 1 received on 9 October 2013 did not fulfil the requirements of Article 123(2) EPC.

III. With the statement of grounds of appeal, the appellant filed a new set of claims 1 to 6.

IV. In a communication under Article 15(1) RPBA, the board informed the appellant that it was doubtful whether the subject-matter of claim 1 as filed with the statement of grounds of appeal fulfilled the requirements of Article 123(2) EPC.

V. With letter received on 27 May 2019, the appellant informed the board that they would not attend the oral proceedings.

VI. Oral proceedings before the board were held on 15 July 2019 in the absence of the appellant.

The appellant requested in writing that the contested decision be set aside and a patent be granted on the basis of the set of claims 1 to 6 filed with the statement of grounds of appeal dated 15 April 2014 and received on the same day.

VII. Claim 1 reads as follows (underlining indicates substantial added features with respect to the original claim 1):

"A method for billing based on a duration of a service period, comprising:
- sending fleet data of [sic] from a third party entity, abbreviated TPE, wireless or wired from an electronic device associated with the TPE via an electronic device associated with a toll rental entity, abbreviated TRE, to an electronic device associated with a toll authority, abbreviated TA; said fleet data includes TPE vehicle information,
- sending a duration based service request from the TPE to the TRE with dynamic association of an RFID vehicle tag,
- saving the service request in an opt-in/opt-out database of TPE
- capturing toll usage of TPE vehicle by TA using RFID reader for providing toll data
- matching toll data with the fleet data in the electronic device of the TA;
if the toll data does not match the fleet data, TA identifies TPE vehicle and providing an information for later violation processing otherwise charging an account by the TA and sending the matched data to the TRE;
- determining on basis of the service request saved in the opt-in/opt-out database of TPE, if the sent matched data is related to an opt-in for duration based tolling or an opt-out for duration based tolling;
if the sent matched data is related to an opt-in for duration based tolling, charging the third party entity for the duration based tolling; and
if the sent matched data is related to an opt-out for duration based tolling, applying at least one of:

a fee for the duration based tolling;
a toll usage amount;
a service fee for the duration based tolling; and
a service fee for the toll usage."

Reasons for the Decision

1. The appeal is admissible.

2. The application

2.1 The application addresses charging of a customer, who rents a third party entity vehicle with a toll rental service option, by rental period instead of toll usage.

3. Amendments - Article 123(2) EPC

3.1 According to Article 123(2) EPC the European patent application may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed. The ultimate standard for assessing compliance with the requirements of Article 123(2) EPC is the "gold standard", meaning that amendments can only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of the original application documents (see Case Law of the Boards of Appeal, 8th edition 2016, section II.E.1.2.1).

3.2 Claim 1 filed with the statement of grounds of appeal includes *inter alia* the following added feature:

"sending a duration based service request from the TPE to the TRE with dynamic association of an RFID vehicle tag"

The appellant argued that a basis for this amendment can be found in the application as filed on page 4, paragraph [0020], lines 1 and 2 in combination with page 4, paragraph [0019], line 4. The appellant further referred to figure 1, reference number 120.

3.3 The board notes that the application as filed on page 4, paragraph [0020], lines 1 and 2 recites that the "third party entity 102 sends the duration based service request 120 to the third party entity with dynamic association of an RFID vehicle tag" (emphasis added), whereas claim 1 recites that the duration based service request is sent to the toll rental entity (TRE). Even if this were recognised as a clerical error in the description, the embodiment illustrated in figure 1 and described in paragraph [0020] is only defined in combination with further specific non-optional features, which are for example:

- The third party applies duration based billing rule 121;
- A coverage map 24 defines the service request coverage area;
- If the renter subscribed for a particular area only, the subscribed area will be treated as an opt-in and the rest of the location will be treated as an opt-out.

Further features of the same embodiment illustrated in figure 1 are defined in detail in paragraphs [0021] and [0022], for example:

- The Duration Package 126 applies the duration billing rule and breaks the service request into different components called duration groups;
- Fleet Identification 130 applies the dynamic different billing models based on the vehicle identification type.

None of these non-optional features is included in claim 1.

3.4 Claim 1 further includes the following added feature:

"if the toll data does not match the fleet data, TA identifies TPE vehicle and providing an information for later violation processing".

The appellant argued that a basis for this amendment can be found in the application as filed on page 6, paragraph [0026], lines 8 to 9 and page 2, paragraph [0004], line 16.

It is however clear from the application as filed that this feature is exclusively described in paragraph [0026] in combination with the following further features:

- sending a disputed status (or a report corresponding to a disputed status) to the toll authority by the toll rental entity based on a dispute with the matched data;
- setting up the account by the toll authority with the toll rental entity;
- sending a service subscription from the third party entity to the toll rental entity based on an activation of the service period.

These non-optional features of the respective embodiment are not included in claim 1.

The further passage cited by the appellant on page 2, paragraph [0004] of the application as filed refers to an identification of third party vehicles by license plate number in case of a violation and does therefore not provide a basis for the general feature of identifying TPE vehicle by TA and providing an information for later violation processing.

The board further notes in this respect that the application as filed on page 2, paragraph [0004], lines 10 to 12 refers to a situation where the customer is not opted for the service ("If the customer is not opted for this service and violated the toll authority/ toll collection entity by not paying..."), while a corresponding feature is not included in claim 1.

3.5 The board concludes that claim 1 includes added isolated features, which have been extracted from a set of features originally disclosed only in combination, in particular the embodiments described in paragraphs [0020] to [0022] and paragraph [0026] of the application as filed. In the statement of grounds of appeal the appellant did not provide any arguments as to why such an isolated extraction should be allowable in the present case. Due to their absence at the oral proceedings, the appellant is treated as relying on their written case only (Article 15(3) RPBA). Consequently the board came to the conclusion that the amendments to claim 1 result in an originally undisclosed combination of selected features and thus, constitute an unallowable intermediate generalisation.

3.6 For the reasons set out above, the board finds that the amendments to claim 1 are not directly and unambiguously derivable from the application as filed and therefore the application as amended contravenes Article 123(2) EPC.

4. Conclusion

Since the appellant's only request was not allowable, the appeal had to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

U. Bultmann R. Lord

Decision electronically authenticated