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Datasheet for the decision of 4 June 2019

Case Number: T 0414/15 - 3.4.03

Application Number: 11764601.8

Publication Number: 2476104

IPC: G07C5/00

Language of the proceedings: EN

Title of invention:
VEHICLE DIAGNOSTIC PORT ADAPTOR

Applicant:
Lysanda Limited

Headword:

Relevant legal provisions:
EPC Art. 52(1), 56, 84, 123(2)
EPC R. 115(2)
RPBA Art. 15

Keyword:
Inventive step - main request (no)
Amendments - added subject-matter - auxiliary request (yes)
Clarity - auxiliary request (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 0414/15 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 4 June 2019

Appellant: (Applicant)	Lysanda Limited Tintagel House London Road Kelvedon Essex CO5 9BP (GB)
Representative:	Brookes IP Windsor House 6-10 Mount Ephraim Road Tunbridge Wells, Kent TN1 1EE (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 20 October 2014 refusing European patent application No. 11764601.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	G. Eliasson
Members:	S. Ward
	G. Decker

Summary of Facts and Submissions

I. The appeal is against the decision of the Examining Division refusing European patent application No. 11 764 601 on the grounds that the claimed subject-matter did not meet the requirements of Articles 123(2) and 84 EPC and did not involve an inventive step within the meaning of Articles 52(1) and 56 EPC.

II. In the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, alternatively, the claims of the auxiliary request, both requests filed with the statement.

III. The following documents are referred to:

D2: US 7 620 484 B1
D3: US 2005/0255743 A1

IV. Claim 1 of the main request reads as follows:

"A vehicle diagnostics port adaptor (10) for transferring engine data from a vehicle's diagnostic port to another unit, comprising;
a connector housing (12) comprising a connector that is connectable to a vehicle diagnostics port;
a transmitter housing (18) comprising a wireless data transmitter for communication with said other unit;
a data cable (16) arranged to permit data to flow between said connector and said transmitter;
characterized in that the relevant positions of said connector housing (12) and transmitter housing (18) are selectable to allow physical separation whilst

maintaining communication and minimizing interference with a driver driving the vehicle, allowing transfer of engine data from said vehicle diagnostic port to said other unit while the vehicle is being driven, and wherein said connector and transmitter housings comprise respective attachment members for releasably securing one to the other."

Claim 1 of the auxiliary request comprises the text of claim 1 of the main request plus the following feature:

"...and wherein the height of the connector housing is substantially the same as the height of the vehicle diagnostics port".

V. The appellant's arguments, insofar as they are relevant to the present decision, may be summarised as follows:

The invention concerned a device to be connected to a vehicle diagnostics (OBD) port allowing the device to access engine data while the vehicle was being driven. As the port was generally placed in the footwell adjacent to the driver, a large device would get in the way of the pedals and would interfere with driving and might become damaged. The solution was to provide the device in two parts, connected by a cable. This had the advantage that the part providing the functionality could be positioned at a distance from the OBD port where it could not interfere with driving or become damaged. In addition, the two parts were connected by a cable and could not become lost. As the two parts could be wrapped together there was a significant saving in postage or storage costs.

The device of D2 would not minimise interference with a driver driving the vehicle, as claimed; a driver wearing the device would be severely constrained.

The respective attachment members were inventive as one skilled in the art would seek to minimise the features of at least the component which fits into the OBD port, and providing attachment members thereto would be counter to this objective.

The additional feature of claim 1 of the auxiliary request (the connector housing having substantially the same height as that of the vehicle diagnostic port) minimised the presence of the device in the footwell of the vehicle, and the size when the device was to be posted, transported, or stored.

VI. With the summons to oral proceedings, the Board sent the appellant a communication under Article 15(1) RPBA setting out its provisional views that the subject-matter of claim 1 of the main request and of claim 1 of the auxiliary request did not appear to meet the requirements of Articles 123(2) and 84 EPC and did not appear to involve an inventive step.

VII. In response the appellant filed a letter dated 14 May 2019 stating only the following:

"We refer to the Summons to attend Oral Proceedings dated 8 November 2018 and hereby inform you that we will not be attending the Oral Proceedings on 4 June 2019."

Reasons for the Decision

1. The appeal is admissible.

2. As announced in advance, the duly summoned appellant did not attend the oral proceedings. According to Rule 115(2) EPC, if a party duly summoned to oral proceedings does not appear as summoned, the proceedings may continue in the absence of that party who may then be treated as relying only on its written case. As the present case was ready for decision at the conclusion of the oral proceedings (Article 15(5) and (6) RPBA), the voluntary absence of a party was not a reason for delaying the decision (Article 15(3) RPBA).

3. *Main Request: Inventive Step*

3.1 Although the contested decision indicates that the applicant (now the appellant) challenged the Examining Division's choice of D2 as the closest prior art (see "Reasons for the decision", point 3.4), this argument has not been raised in appeal, and the Board sees D2 as a suitable starting point for discussing inventive step.

3.2 Claim 1 of the main request comprises the following feature:

"the relevant positions of said connector housing (12) and transmitter housing (18) are selectable to allow physical separation whilst maintaining communication and minimizing interference with a driver driving the vehicle".

3.3 The appellant considers this feature to represent a difference over D2, and argues as follows:

"the amended claims are inventive over D2 as the device of D2 does not 'minimise interference with a driver driving the vehicle'. D2 clearly shows that a driver, wearing the device, would be severely constrained by that device. This not [sic] the case with the present apparatus."

3.4 The Board accepts that wearing the device as shown in Fig. 2B with the connector 8 attached to the OBD port while driving a car would indeed severely constrain the driver, and would probably be illegal in most jurisdictions. However, it is neither disclosed nor, in the Board's view, intended in D2 that the device is to be worn by a driver while driving the vehicle. In fact, D2 envisages that the device is to be used when the vehicle is stationary by an operative other than the driver/customer (see e.g. column 7, lines 45-46: "the operator tears off the printout and hands it to the customer 77"; claim 16 as originally filed: "handing the printed report to the customer").

Thus, the intended use of the device of D2 is different to that of the device of the present invention.

3.5 Claim 1 is, however, for a vehicle diagnostics port adaptor, and not a use to which the adaptor is put or a method of using it, and the Board does not believe that the difference in intended use is sufficient to establish novelty over the device of D2. Clearly, the device of D2 could be left attached while the vehicle is being driven. Moreover, the cable 7 is of a sufficient length that it may be conveniently connected to the OBD port of a stationary vehicle while an

operator uses the arm-mounted diagnostics device 1 (see e.g. Fig. 5). In a moving vehicle, rather than mounting it on the arm of an operative, the attached diagnostics device of D2 could presumably be placed, if desired, in some location (e.g. on the passenger seat, in the passenger footwell) considered to "minimise interference with a driver driving the vehicle".

The feature referred to above under point 3.2 is not, therefore, seen as a difference over D2.

3.6 Claim 1 also defines that the adaptor:

"allow[s] transfer of engine data from said vehicle diagnostic port to said other unit while the vehicle is being driven".

3.7 As mentioned above, in operating the device of D2, it does not appear to be envisaged that engine data is obtained from the vehicle diagnostic port while the vehicle is being driven. However, this feature again relates to an intended use.

In a claim for a vehicle diagnostic port adaptor, the above feature can only be interpreted as defining that, when used in a vehicle which is arranged to provide engine data to the OBD port while driving, the claimed adaptor would be capable of transferring this data to the "other unit". The Board sees no reason why it should be supposed that the device of D2 would be unable to transfer such data in exactly the same way in which it is arranged to transfer data from a stationary vehicle. Hence, this feature also cannot be seen as a difference of the claimed device over that of D2.

3.8 The Board therefore finds that the device of claim 1 differs from that of D2 only in the following feature:

"wherein said connector and transmitter housings comprise respective attachment members for releasably securing one to the other."

The technical effect of this feature is to allow the adaptor to be neatly stored and secured when not in use (page 6, lines 4-12).

3.9 D2 already discloses a solution to the problem of neat and secure storage of two elements joined by a cable (or "DLC") 7, in the form of DLC holder 6 for wrapping the cable round when not in use, the holder having a notch for securing the end of the cable adjacent to connector 8 (as seen in Figs. 1, 2A and 2B). The problem underlying the present invention is therefore seen as providing an alternative way of neatly and securely stacking a connector and housing joined by a cable.

3.10 D3 discloses an arrangement whereby a connector and a housing to which it is attached by a cable comprise respective attachment members for releasably securing one to the other (for example, retaining stick unit 3028 and retention groove unit 3068 in Fig. 3B), such that "the plug adaptor assembly 30 is thus kept in a neat-and-tidy manner" (paragraph [0030], last sentence; claim 1, final feature). D3 therefore discloses the claimed solution to the same problem.

3.11 The Examining Division found that this combination of documents would lead the skilled person to the claimed subject-matter, and in its communication under Article 15(1) RPBA, the Board informed the appellant that it

considered this argument to be plausible. As the appellant has made no substantive response, the Board sees no reason to alter its provisional view. The subject-matter of claim 1 of the main request does not, therefore, involve an inventive step within the meaning of Articles 52(1) and 56 EPC.

In the light of this finding it is unnecessary for the Board to consider the other provisional objections to the main request raised in the communication under Article 15(1) RPBA.

4. *Auxiliary Request: Articles 123(2) and 84 EPC*

4.1 The additional feature of claim 1 of the auxiliary request is the following:

"wherein the height of the connector housing is substantially the same as the height of the vehicle diagnostics port."

4.2 No basis in the application as originally filed was given for this feature in the statement of grounds of appeal. The passage which is closest to this subject-matter is on page 4, lines 24-28:

"The connector housing 12 has a lower recessed part 20 that is substantially the same height as, and connects with, the vehicle OBD port. The connector housing includes an upper, data transfer part 22 that is significantly smaller in height than the recessed part 20. As such, the connector housing 12 has substantially the same overall height as the OBD port."

4.3 However, if this is intended to be the basis for the additional feature (and there appears to be no other

possibility), the Board sees no basis for omitting from the claim the features "lower recessed part 20" and "upper, data transfer part 22 that is significantly smaller in height than the recessed part 20".

The preliminary view of the Board was therefore that the subject-matter of claim 1 of the auxiliary request did not meet the requirements of Article 123(2) EPC. As the appellant has made no substantive response, the Board sees no reason to alter this provisional view.

4.4 Moreover, the Board was of the preliminary view that claim 1 was not clear (Article 84 EPC), since it did not define unambiguously which dimension the "height" referred to. Again, as this provisional finding has not been challenged, the Board sees no reason to change its view.

4.5 Hence, the subject-matter of claim 1 of the auxiliary request does not meet the requirements of Articles 123(2) and 84 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

S. Sánchez Chiquero G. Eliasson

Decision electronically authenticated