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Datasheet for the decision of 11 September 2019

Case Number: T 2300/16 - 3.2.01

Application Number: 09765161.6

Publication Number: 2480440

IPC: B60W40/08, B60W40/10, B60W40/06, B60W40/12

Language of the proceedings: EN

Title of invention:
METHOD FOR FORECASTING THE EVOLUTION OF THE MAGNITUDE OF A DATA FOR A VEHICLE JOURNEY

Applicant:
Volvo Lastvagnar AB

Headword:

Relevant legal provisions:
EPC R. 137(5)

Keyword:
Amendments - added feature combines with the originally claimed invention to form a single general inventive concept

Decisions cited:

Catchword:

Europäisches Patentamt
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Office européen des brevets

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Case Number: T 2300/16 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 11 September 2019

Appellant: (Applicant)	Volvo Lastvagnar AB 405 08 Göteborg (SE)
Representative:	Goreaud, Alexandra Cabinet Germain & Maureau 12 rue Boileau 69006 Lyon (FR)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 21 April 2016 refusing European patent application No. 09765161.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	W. Marx
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. European patent application No. 09 765 161.6, originally filed under the PCT, was refused by the Examining Division with decision dated 21 April 2016 on the grounds that the claims under consideration, filed on 12 June 2013, did not comply with the requirements of Rule 137(5) EPC.

II. Claim 1 underlying the decision under appeal reads as follows:

> 1. A method for forecasting the evolution of the magnitude (Y) of a data associated to a journey of an automotive vehicle via a mathematical model and for selecting the best running conditions for a vehicle, in an onboard computation system, where said magnitude is expressed by a function (f) of at least one input parameter (x, m, p), wherein this method includes at least the steps of:
>
> a) defining (101) a first model ($f_{t=0}$) of said function (f) used for computing said magnitude on the basis of said input parameter;
>
> b) running (102) said vehicle on a reference trip, for a given time or a given distance, said input parameter (x, m, p) and said magnitude (Y) being measured (Y_M, x_M) at least at one time during or at the end of the reference trip;
>
> c) computing (103) a value (Y_C) of said magnitude by using the first model ($f_{t=0}$) of said function (f) and the value of said parameter (x_M) measured at step b);
>
> d) comparing (104) the values (Y_M, Y_C) of said magnitude at said time, respectively measured at step b) and computed at step c); and
>
> e) depending on the result of the comparison of step d), adjusting (105) said function ($f_{t=1}$) in a way corresponding to the reduction of the difference between said measured value (Y_M) and said computed value (Y_C),
>
> characterized in that, based on the forecasting of the magnitude of the data associated to a given journey, a road to be followed is selected by onboard computation means, and in that said reference trip is a part of the journey to be followed by said vehicle.

III. The Examining Division considered that the feature of claim 1 according to which "based on the forecasting of the magnitude of the data associated to a given journey, a road to be followed is selected by onboard computation means" was not searched and did not combine with the originally claimed invention to form a single general inventive concept. The invention as originally claimed was not concerned with selecting a road to be followed but with providing reliable forecasting. Once this forecasting was done, the results could be used for selecting a road. Said selection, however, had nothing to do with the forecasting.

IV. The appellant (applicant) filed an appeal against this decision and requested that it be set aside and that a patent be granted on the basis of the claims underlying the impugned decision. The appellant subsidiarily requested oral proceedings.

V. With communication dated 16 July 2018, the Board informed the appellant that it shared the view expressed in the statement of grounds of appeal, according to which claim 1 met the requirements of Rule 137(5) EPC, and that it intended to set the decision aside and remit the case to the Examining Division for further prosecution. The Board further requested the appellant to state whether in that event the request for oral proceedings was maintained.

VI. With letter of 3 September 2018 the appellant informed the Board that, in view of the findings as set out in the above-mentioned communication, it did not maintain the request for oral proceedings.

Reasons for the Decision

1. Rule 137 was amended by decision of the Administrative Council of 25 March 2009 and the amended Rule applies to European patent applications for which the European search report or the supplementary European search report was drawn up on or after 1 April 2010 (see OJ EPO 2009, 299, in particular Article 1, point 7, and Article 2(2) of the decision). In the present case the International Search Report (which takes the place of the European search report, see Article 153(6) EPC) was drawn up on 24 February 2010, and therefore the amended Rule does not apply. It is thus the text of Rule 137 EPC in force before the above-mentioned decision of the Administrative Council that applies. Paragraph (4) of this Rule contains the same provisions of amended Rule 137(5) EPC, and therefore the correct legal basis for the Examining Division's refusal is Rule 137(4) EPC in force before the decision of the Administrative Council.

2. According to Rule 137(4) EPC, amended claims may not relate to unsearched subject-matter which does not combine with the originally claimed invention or group of inventions to form a single general inventive concept.

3. The Examining Division's objection is exclusively concerned with the feature added to the characterizing portion of claim 1, according to which a road to be followed is selected by onboard computation means based on the forecasting of the magnitude of the data associated to a given journey. According to the Examining Division, the originally claimed invention was concerned with providing reliable forecasting, whilst the added feature is concerned with selecting a

road to be followed (see point 2.5 of the contested decision).

4. The Board does not agree with the Examining Division's conclusions for the following reasons.

It is clear from the wording of the claim that the added feature concerning the selection of a road to be followed is not to be taken in isolation from the forecasting of the magnitude of the data associated to a given journey, since the selection of the road is based thereupon. Therefore, the "road selection feature" combines with the "forecasting feature". The question is whether they combine to form a single general inventive concept.

Turning to the disclosure of the application as filed, it is apparent that the originally claimed invention relates to a method for forecasting the evolution of the magnitude of a data associated to a journey of an automotive vehicle via a mathematical model. The method of originally filed claim 1 foresees, inter alia, running the vehicle on a reference trip (feature b of claim 1) and adjusting a mathematical function based on measurements made during the reference trip (feature e of claim 1). Accordingly, the Examining Division is correct in stating that the originally claimed invention is concerned with "reliable forecasting", since the "adjusting" feature results in a reliable, or rather a more accurate, forecasting, see also page 2, lines 23 to 26 of the description of the application as filed.

The further question that arises is what is the purpose of said reliable forecasting. In accordance with the disclosure of the application as filed, the reliable

forecasting serves to "efficiently use computerized systems in order to select the best running conditions for a vehicle" (page 2, lines 3 to 5). The "best running conditions" are, in particular, those that allow optimizing fuel consumption by forecasting the fuel consumption (see page 2, lines 26 to 28; see the examples 1 to 3): an accurate forecasting of the fuel consumption enables the onboard computation means to efficiently select a road to be followed and/or a gear to be used during a given journey (see page 2, lines 26 to 28).

Although in accordance with the disclosure of the application as filed the "forecasting feature" and the "best running conditions" are not exclusively related to fuel consumption (see page 9, lines 13 to 17: forecasting of engine load or pollutant emissions being other possibilities), and fuel consumption is not exclusively related to the selection of a road to be followed (see page 2, line 28 and page 9, lines 18 to 20: a gear to be used or a driving strategy can instead be selected for a given journey), it is apparent that the general inventive concept is to use the reliable forecasting in order to make a more efficient use of the automotive vehicle during a journey.

It follows from the above that the "road selection feature" combines with the "forecasting feature" to form a single general inventive concept.

In fact, rather than introducing a different general inventive concept, the amendment made aims at restricting the invention to a particular aspect of said general inventive concept, namely using the reliable forecasting for selecting a road to be followed which allows making a more efficient use of

the automotive vehicle (e.g. by allowing an optimized fuel consumption) during a journey.

5. In view of the above and since the Examining Division has not given other grounds for the refusal apart from the non compliance with Rule 137(5) EPC, the contested decision must be set aside.

6. Since, however, novelty and inventive step (in particular) were not addressed in the decision under appeal, the board exercises its discretion under 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 Examining Division for further prosecution.

The Registrar: The Chairman:

A. Vottner G. Pricolo

Decision electronically authenticated