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**Datasheet for the decision
of 11 June 2019**

Case Number: T 1691/17 - 3.2.01

Application Number: 10804947.9

Publication Number: 2459416

IPC: B60Q1/48, B62D15/02, B60R1/00,
B60Q9/00, G05D1/02, G08G1/16

Language of the proceedings: EN

Title of invention:
PARKING ASSIST SYSTEM

Patent Proprietor:
Magna Electronics Inc.

Opponents:
Connaught Electronics Ltd.
Conti Temic microelectronic GmbH

Headword:

Relevant legal provisions:
EPC Art. 54
RPBA Art. 12(4), 13(1)

Keyword:

Late-filed facts - admitted (no)

Novelty - (yes)

Decisions cited:

J 0010/12

Catchword:



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Case Number: T 1691/17 - 3.2.01

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

Appellant: Connaught Electronics Ltd.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
17 May 2017 concerning maintenance of the
European Patent No. 2459416 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: S. Mangin
 S. Fernández de Córdoba

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (opponent 1) against the interlocutory decision of the opposition division finding that, on the basis of auxiliary request 1, the patent in suit (hereinafter "the patent") met the requirements of the EPC.
- II. The opposition division decided that the subject-matter of auxiliary request 1 was novel over D11 and D12 and involved an inventive step in view of D11 alone or in view of D11 in combination with D21 or in view of D22 in combination with D32.
- III. Oral proceedings were held before the Board on 11 June 2019.
- IV. The appellant (opponent 1) requested that the decision under appeal be set aside and that the European patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed or that the patent be maintained in amended form on the basis of one of the first to eighth auxiliary requests filed with the response to the grounds of appeal.

- V. The party as of right (opponent 2) did not submit requests in writing.
- VI. The independent claim 1 of the main request (corresponding to the auxiliary request 1 in opposition proceedings) including the feature numbering of the opposition division reads as follows:

- M11 A parking assist system for a vehicle, the parking assist system comprising:
- M12 a camera (12) mounted to the vehicle so as to capture an image of a rearward scene;
- M13 a display (16) in the vehicle connected to the camera and configured to display the captured image of the rearward scene;
- M14 a controller (14),
characterized in that
- M15 the controller is activated in a first mode in response to actuation of a first button and is activated in a second mode in response to actuation of a second button;
- M16 wherein, when operating in the first mode, the controller adds a first overlay (22) to the displayed image of the rearward scene, and
- M17 wherein the first overlay includes a representation of a target parking position that comprises a rectangle (24) that is offset a selected distance behind the vehicle and a selected distance laterally from the vehicle;
- M18 wherein the rectangle has a length that represents substantially the length of the vehicle and
- M19 wherein the rectangle has a width that represents substantially the width of the vehicle;
- M20 wherein the controller is operable in the first mode while the vehicle is being driven;
- M21 wherein, when the vehicle is in a reverse gear, the controller is operable in the second mode, and
- M22 wherein, when operating in the second mode, the controller adds a second overlay (34) and a third overlay (40b) to the displayed image of the rearward scene;
- M23 wherein the second overlay includes a representation of a projected rearward path of the vehicle that is based on the steering angle of the vehicle; and

M24 wherein the controller is configured to determine a target path for the vehicle to guide the driver to the target parking position and

M25 wherein the third overlay includes a representation of the target path.

VII. In the present decision, reference is made to the following documents:

- D11: EP 1 308 346 B1
- D21: EP 2 055 536 A1
- D12: DE 10 2008 049113 A1
- D22: US 2004/153243 A1
- D32: DE 101 09 680

VIII. The appellant's arguments can be summarised as follows:

Admissibility of the novelty attack based on D32 and the inventive step attacks starting from D32 in combination with D12 or D21 and based on D21 alone - Article 12(4) RPBA.

The novelty and inventive step attacks raised with the grounds of appeal remain within the same legal framework of the opposition proceedings. Moreover an inventive step objection starting from D21 was raised in the grounds for opposition by opponent 1. Thus the inventive step objection starting from D21 was already in opposition proceedings.

Admissibility of the objection of insufficient disclosure (Article 100(b) EPC in combination with Article 83 EPC) - Article 13(1) RPBA.

The video and the presentation printout submitted by the patent proprietor stress the fact that the patent lacks clearly some disclosure about how the invention

should be carried out by a person skilled in the art. Insufficiency of disclosure was already raised during opposition proceedings.

Novelty of the subject-matter of claim 1 over D12 - Article 54 EPC.

All the features of claim 1 are disclosed in D12 in particular:

- "the controller is activated in a first mode in response to actuation of a first button" is disclosed in paragraph [0026] ("So kann beispielweise eine eigene Schaltfläche für das Aktivieren eines Parallelmodus für das parallele Einparken vorhanden sein") and;
- "the controller is activated in a second mode in response to actuation of a second button" is disclosed in paragraph [0024].

IX. The respondent's arguments can be summarised as follows:

Admissibility of the novelty attack based on D32 and the inventive step attacks starting from D32 in combination with D12 or D21 and based on D21 alone - Article 12(4) RPBA.

These attacks should not be admitted as they should have been raised in opposition proceedings. The opponents had several opportunities to do so.

The minutes of the oral proceedings before the opposition division clearly state under point 8.12 that besides novelty over D11 and D12 the parties had no further arguments and under point 9.13 that beside the inventive step attacks based on D11 alone, D11 in

combination with D21 and D22 in combination with D32, the parties did not wish to add any further argument.

Moreover according to J 0010/12 the primary purpose of the appeal proceedings is to give a judicial decision upon the correctness of a decision taken by a first-instance department.

Admissibility of the insufficiency of disclosure (Article 100(b) EPC in combination with Article 83 EPC) objection - Article 13(1) RPBA.

The insufficiency of disclosure objection was raised less than a month before the oral proceedings and is not substantiated. While the video and the presentation printout were already submitted in opposition proceedings no objection of insufficiency of disclosure based on these items were raised during opposition proceedings.

Novelty of the subject-matter of claim 1 over D12 - Article 54 EPC.

D12 does not disclose features M15, M16, M17 and M20. In particular there is no "controller activated in a first mode in response to actuation of a first button and activated in a second mode in response to actuation of a second button" in D12. D12 discloses in paragraph [0012] that the first mode is automatically activated when the speed of the car is below 40 km/h and the second mode is automatically activated when the rear gear is engaged. D12, paragraphs [0023], [0024], [0026] and [0027], only discloses options that can be triggered via buttons or blinkers.

Reasons for the Decision

1. The appeal is admissible.
2. The novelty attack based on D32 and the inventive step attacks based on D32 in combination with D12 or D21 and based on D21 alone raised for the first time with the statement of grounds of appeal against the subject-matter of claim 1 of the main request are not admitted into the proceedings according to Article 12(4) RPBA.
 - 2.1 During opposition proceedings, the following objections were raised against the subject-matter of claim 1 of the first auxiliary request, corresponding to the main request in appeal proceedings:
 - novelty over D11 and D12 and;
 - inventive step in view of
 - D11 alone
 - D11 in combination with D21
 - D22 in combination with D32.
 - 2.2 With the statement of grounds of appeal the appellant raised the following objections against the subject-matter of claim 1 of the main request:
 - novelty over D32 and;
 - inventive step in view of:
 - D32 in combination with D12
 - D32 in combination with D21
 - D21 alone
 - 2.3 While D32 was submitted with the notice of opposition of opponent 2, lack of novelty over D32 was not raised during opposition proceedings and the opposition division did not take position on this attack in their decision.

2.4 According to Article 12(4) of the Rules of Procedure of the Boards of Appeal (RPBA) the Board has the power to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings.

While it is acknowledged that no new ground for opposition is invoked in the present case, the novelty attack based on D32 presented for the first time in appeal proceedings amounts to a new alleged fact and is thus subject to the Board's discretion.

2.5 Although cited by opponent 2, D32 must be assumed to have been known to the appellant (opponent 1) at an early stage of the opposition proceedings. Any party to the proceedings is indeed expected to be aware of all other parties' submissions. In particular, a diligent opponent cannot limit the preparation of a case before oral proceedings to its own submissions and the respective reply of the patentee only, but should also consider the submissions of any other opponent and the respective reply thereto. Accordingly, being aware of D32, the appellant could have raised an objection of lack of novelty over D32, mentioned by opponent 2, during opposition proceedings. The fact that the novelty attacks submitted by opponent 1 against the patent as maintained by the opposition division were not successful does not justify looking for other novelty attacks on the basis of documents already in the proceedings only at the stage of filing an appeal. The Board does not exclude that there might be cases in which particular circumstances would justify such behaviour. However, no such circumstances were put forward by the appellant, who merely argued that the novelty objection based on D32 was still within the same legal framework of the opposition proceedings.

However, as it is apparent from the above, this has no relevance to the question at stake here.

2.6 Analogous consideration apply in respect of the inventive step attack starting from D32 as closest prior art. Although D32 was used for attacking inventiveness of claim 1 of auxiliary request 1 (corresponding to the main request in these appeal proceedings) during first instance proceedings, it was not taken as the closest prior art but only as second document to combine with the closest prior art. Accordingly, the above-mentioned attack submitted by the appellant with the statement of grounds of appeal amounts to a fresh case which could have been raised during opposition proceedings, as it must be assumed that the appellant was aware of D32 from an early stage of the opposition proceedings.

2.7 As regards the objection of lack of inventive step in view of D21 alone, the appellant submitted that this objection had already been raised with their notice of opposition. It is however to be noted that it was raised against the subject-matter of claim 1 as granted and not resubmitted against the subject-matter of claim 1 of auxiliary request 1 (corresponding to the main request in appeal proceedings). Furthermore, it can be inferred from the minutes of the oral proceedings in opposition proceedings, point 9.13, that the opponents did not intend to add any additional attack over those raised during oral proceedings, namely inventive step starting from D11 and starting from D22. Considering that an attack against the patent as granted with D21 as the closest prior art was already on file, this document could also have been used as the closest prior art against claim 1 of auxiliary request 1 in opposition proceedings. Moreover, from the content of

the minutes of oral proceedings, it can only be concluded that it was the appellant's own deliberate choice not to do so.

- 2.8 In conclusion under these circumstances the Board exercises its discretion pursuant Article 12(4) RPBA not to admit the new novelty objection based on D32 and the new inventive step objections based on D32 in combination with D12 or D21 and based on D21 alone.
3. The objection of insufficiency of disclosure (article 100(b) EPC in combination with article 83 EPC) is not admitted in the appeal proceedings according to Article 13(1) RPBA.
 - 3.1 The objection of insufficiency of disclosure was not raised with the statement of grounds of appeal but only with the letter of the appellant dated 20 May 2019.
 - 3.2 Under Article 13(1) RPBA any amendment to a party's submissions after it has filed its statement of grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion is 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.
 - 3.3 The objection of insufficiency of disclosure is not substantiated. The appellant only alleges that the video and the presentation printout submitted by the respondent stress the fact that the invention is not sufficiently disclosed. The appellant does not explain why the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

3.4 Thus in the present case, the Board exercises its discretion not to admit the objection of insufficiency of disclosure as it is filed at a late stage of the appeal proceedings (less than a month before the oral proceedings) and, as it is unsubstantiated, the need for procedural economy speaks clearly against its admission.

4. The subject-matter of claim 1 is novel over D12.

4.1 The Board considers that the subject-matter of claim 1 differs from D12 in that "the controller is activated in a first mode in response to actuation of a first button and is activated in a second mode in response to actuation of a second button;" (feature M15 of claim 1).

4.2 D12, paragraph [0010], discloses two modes as defined in claim 1:

- a first mode "zunächst eine Projektion einer durch Abstandsmessende Sensorik vermessene Parklücke in das Bild beispielweise einer Rückfahrkamera" and ;
- a second mode "Danach erfolgt eine Projektion der Ist-Fahrspur und der für den Parkvorgang errechneten Soll-Fahrspur in das Bild der Rückfahrkamera".

4.3 D12, paragraph [0014], discloses that the first mode is automatically activated when the car is driven under 40 km/h and D12, paragraph [0015] discloses that when a parking space is found and the rear gear is engaged, the second mode is activated.

Thus in D12 the driver does not actuate buttons to enter the first or the second mode, the actuation of the modes are automatic.

- 4.4 The below buttons in D12 do not activate the first mode or the second mode, but activate parking options:
- The blinker in paragraph [0023] enables to change the parallel parking from the passenger's side to the driver's side.
 - "Parklücke verschieben" modus in paragraph [0027] enables to shift the parking space on the sidewalk.
 - The "modus wechseln" on the "Pop-up Menü" in paragraphs [0024] and [0026] enables to change from "parallelmodus" parallel parking to "Rangiermodus" perpendicular parking.
- 4.5 As the subject-matter of claim 1 is considered novel over D12, the question on the admissibility of the novelty attack in view of D12 (which was cited in the statement of grounds of appeal in connection with an attack of lack of inventive step starting from D32 but was used to substantiate an objection of lack of novelty only with the appellant's letter of 20 May 2019) may remain open.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated