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**Datasheet for the decision  
of 19 October 2021**

**Case Number:** T 0015/19 - 3.4.02

**Application Number:** 09768855.0

**Publication Number:** 2313869

**IPC:** G01C19/00, G07C1/30

**Language of the proceedings:** EN

**Title of invention:**

ELECTRONIC PARKING DISC COMPRISING MOVEMENT DETECTION MEANS

**Applicant:**

Bent Neubauer Holding ApS

**Headword:**

**Relevant legal provisions:**

RPBA 2020 Art. 13(1), 13(2)

**Keyword:**

Amendment to appeal case - amendment gives rise to new objections (yes)

Amendment after summons - exceptional circumstances (no) - taken into account (no)

**Decisions cited:**

T 1767/16

**Catchword:**



**Beschwerdekammern**  
**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 0015/19 - 3.4.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.02**  
**of 19 October 2021**

**Appellant:** Bent Neubauer Holding ApS  
(Applicant) Drosbøved 9  
7120 Vejle (DK)

**Representative:** Patrade A/S  
Ceresbyen 75  
8000 Aarhus C (DK)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 23 July 2018  
refusing European patent application No.  
09768855.0 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** R. Bekkering  
**Members:** A. Hornung  
B. Müller

## **Summary of Facts and Submissions**

- I. The applicant appealed against the decision of the examining division refusing European patent application No. 09768855.0 on the basis of Article 97(2) EPC because the requirements of Articles 123(2), 84 and 56 EPC were not fulfilled.
- II. According to the statement setting out the grounds of appeal, the applicant's main request was to remit the case to the examining division for further prosecution on the basis of the amended sets of claims filed as first to fourth auxiliary requests together with the statement of grounds of appeal. In the alternative, the applicant requested that the decision of the examining division be set aside and a patent be granted on the basis of one of the sets of claims of the aforementioned first to fourth auxiliary requests.
- III. Oral proceedings before the board were held on 19 October 2021.

At the beginning of the oral proceedings, the applicant filed a claim which was meant to constitute claim 1 of a claim request, with the further claims being claims 2-7 as filed with a letter dated 28 May 2018. At the same time, the appellant withdrew the pending requests filed with the statement of grounds of appeal. The appellant stated that the examining division had set out this version of claim 1 in its communication (as "potential claim wording" in point 5) annexed to the summons to oral proceedings dated 5 December 2017.

IV. The applicant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of claim 1 as filed during the oral proceedings of 19 October 2021 and claims 2-7 as filed with a letter dated 28 May 2018.

V. Independent claim 1 according to the sole and main request reads as follows:

"A parking disc (2) for mounting on a vehicle where the parking disc is placed visible from the outside of the vehicle, which parking disc comprises

- a signal processing unit (12),
- an electronic clock (6),
- a display (4) that is connected to the electronic clock, and
- at least one detector (10) for detecting movement of the vehicle, the detector being connected to the signal processing unit, wherein
- the display is adapted to display actual time during normal driving of the vehicle,
- the display is adapted to constantly display the time of initiation of vehicle parking,
- the at least one detector is adapted to determine actual relative motion of the vehicle and to provide a corresponding signal (8) to the signal processing unit,
- the signal processing unit is adapted to cause switching of the display from displaying actual time to constantly

displaying the time of initiation of vehicle parking when a vehicle stop is detected by the at least one detector,

- the signal processing unit is adapted to cause switching of the display from constantly displaying the time of initiation of vehicle parking to displaying actual time only after a minimum value for the motion of the vehicle has been detected by the at least one detector,

characterised in that the parking disc further comprises at least a gyro meter (30) that is connected to the signal processing unit and adapted to detect turning of the vehicle,

characterised in that the at least one detector for detecting movement of the vehicle is an acceleration detector (10), and

characterised in that the signal processing unit is adapted to control switching of the display on the basis of a combination of signals from the acceleration detector and the gyro meter".

## **Reasons for the Decision**

1. Main request - Admittance
  - 1.1 The board decides not to admit the main and sole request into the proceedings under Article 13(2) RPBA 2020.
    - 1.1.1 The main request was filed only at the beginning of the oral proceedings before the board. Present claim 1 has been modified with respect to the previous version of claim 1 of the first auxiliary request filed with the statement of grounds of appeal by substantially rewording

the whole claim. According to the applicant, these amendments of claim 1 were intended to overcome the objections under Articles 123(2) and 84 EPC raised in the appealed decision. In the communication dated 5 December 2017 and attached to the summons to oral proceedings before the examining division, the division considered present claim 1 to meet those requirements, while at the same time raising objections under Article 56 EPC. This claim was not filed before the examining division. In the oral proceedings before the board, the appellant declared that it had the intention to convince the board that the examining division's objections under Article 56 EPC were unfounded.

- 1.1.2 According to Article 13(2) RPBA 2020, "[a]ny amendment to a party's appeal case made after (...) notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned". The board is unable to see any such exceptional circumstances justifying filing the new main request only at the oral proceedings before the board. As set out above, objections under Articles 123(2) and 84 EPC against claim 1 then on file were raised by the examining division in its communication dated 5 December 2017; objections were again raised in a further communication dated 18 June 2018. Therefore, the present claim request could and should have been filed during the first instance examination proceedings given that, according to the examining division, it met the requirements of Article 123(2) and 84 EPC. Instead thereof, the applicant chose not to attend the oral proceedings. During those proceedings it could have made an attempt at convincing the examining division that the subject-matter of present claim 1 complied with Article 56 EPC.

1.1.3 The applicant also argued that this claim was already in the proceedings since it was proposed by the examining division in its communication dated 5 December 2017 and annexed to the summons to oral proceedings.

The board cannot agree. A claim only forms part of the proceedings if it is filed by the applicant. The "potential claim wording" proposed by the examining division, however, was never filed by the applicant before the examining division. The claim filed in reply to the above communication with a letter of 28 May 2018 was not identical to the one proposed therein and only filed at the beginning of the oral proceedings before the board.

1.1.4 It follows that, in the absence of exceptional circumstances, the main request filed during oral proceedings before the board is not to be taken into account (Article 13(2) RPBA 2020).

1.2 Besides from not being admissible under Article 13(2) RPBA 2020, the main request is also not admissible under Article 13(1) RPBA 2020. The criteria of Article 13(1) RPBA 2020 may be relied on in addition to those of Article 13(2) RPBA (see T 1767/16, point 5.1). Indeed, the amendments to claim 1 *prima facie* give rise to new objections at least under Article 123(2) EPC, which is the criterion mentioned at the end of Article 13(1).

1.2.1 Amended claim 1 defines that "the at least one detector for detecting movement of the vehicle is an acceleration detector". Moreover, amended claim 1 defines four functions carried out by the at least one detector, namely "detecting movement of the vehicle", determining "actual relative motion of the vehicle", detecting "a vehicle stop" and detecting "a minimum value for the motion of the



vehicle". At least the function of an accelerometer detecting "a vehicle stop" is *prima facie* not unambiguously derivable from the application as originally filed. On the contrary, it would appear that an accelerometer does not differentiate a vehicle stop from a vehicle moving at constant speed. Therefore, an accelerometer is generally not adapted to detect unequivocally a vehicle stop on its own. The board cannot see any literal basis nor any implicit disclosure of this amended feature in the original application documents.

- 1.2.2 During oral proceedings, the applicant referred to various passages of the patent application as originally filed, e.g. page 1, lines 10 to 12 in combination with page 3, lines 7 to 10; page 3, lines 18 to 23; page 3, lines 25 to 27; page 3, line 33 to page 4, line 1; claims 2 to 4, from which it was allegedly derivable that the accelerometer of claim 1 detected a vehicle stop.

Moreover, the applicant submitted that the examining division was of the opinion that the claim wording "is meeting the requirements of Articles 123(2) and 84 EPC" (see the communication of the examining division, dated 5 December 2017, page 3, second paragraph).

- 1.2.3 The board is not convinced by these arguments.

Some passages referred to by the applicant do not disclose any vehicle stop at all.

According to page 3, lines 21 to 23, "a combination of parameters for detecting motion or stop of vehicles" is used. From this sentence, it cannot unambiguously be derived that the vehicle stop is detected by the accelerometer, since the vehicle stop is detected from a

combination of parameters involving both an accelerometer and a gyro meter (page 3, lines 15 to 20).

According to page 3, line 33 to page 4, line 1, "the absence of an acceleration signal may be used as indication of the initiation of a parking". Indicating the initiation of a parking, however, is not equivalent to detecting a vehicle stop as claimed, since parking may be initiated as soon as the vehicle decreases sufficiently in speed but is not yet at a stop.

According to page 6, lines 29 to 31, "[i]f the vehicle has stopped and the detectors 10, 30 indicate the stop, (...) constant display of the time" occurs. Since a plurality of detectors, namely an accelerometer (10) and a gyro meter (30) (see page 6, lines 15 to 17) indicate the vehicle stop, this sentence confirms that the patent application as originally filed does not unambiguously disclose that the accelerometer on its own is adapted to detect a vehicle stop.

Concerning the favourable opinion of the examining division about the compliance of the claim wording with the requirements of Articles 123(2) and 84 EPC, the board notes that this opinion of the examining division is not binding on the board.

1.2.4 Moreover, it is to be noted that the examining division was of the opinion that the subject-matter of the proposed claim did not involve an inventive step (see the examining division's communication dated 5 December 2017, page 4, second but last paragraph). Therefore, doubt persists whether the new claim *prima facie* overcomes the existing issues under Article 56 EPC.

2. In view of the above the appeal must be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



L. Gabor

R. Bekkering

Decision electronically authenticated