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**Datasheet for the decision
of 26 June 2024**

Case Number: T 1849/20 - 3.4.01

Application Number: 15779561.8

Publication Number: 3132387

IPC: G06K19/07, G08G1/017, G08B1/08,
H04W4/02, G06K7/10, G06K7/00

Language of the proceedings: EN

Title of invention:
VEHICLE IDENTIFICATION AND/OR MONITORING SYSTEM

Patent Proprietor:
Licensys Australasia Pty Ltd

Opponent:
Porta Saber - Comércio E Serviços De Consultoria,
Unipessoal Lda.

Headword:
RFID vehicle identification/Licensys

Relevant legal provisions:
EPC Art. 83, 104(1)
RPBA 2020 Art. 16(1)

Keyword:

Sufficiency of disclosure - (no)
Apportionment of costs - (no)

Decisions cited:

T 0212/07



Beschwerdekammern

Boards of Appeal

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Case Number: T 1849/20 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 26 June 2024

Appellant: Licensys Australasia Pty Ltd
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 8 July 2020
revoking European patent No. 3132387 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chair P. Scriven
Members: A. Medeiros Gaspar
C. Almberg

Summary of Facts and Submissions

- I. An opposition was filed to the patent. The notice of opposition included objections under the grounds of Article 100(a), 100(b), and 100(c) EPC.
- II. The Opposition Division decided to revoke the patent for reasons other than insufficiency of disclosure, since the objections brought forward under that ground of opposition were not persuasive (see appealed decision point 6.3).
- III. On appeal, the proprietor requested that the decision be set aside and the patent maintained in amended form on the basis of the main request underlying the decision (labelled request 1A) or, alternatively, on the basis of one of 27 auxiliary requests.
- IV. In reply, the opponent requested dismissal of the appeal, and, *inter alia*, insisted on the objection of insufficiency of disclosure that had been raised before the Opposition Division.
- V. Both parties conditionally requested oral proceedings.
- VI. On 19 July 2023, the parties were summoned to oral proceedings, to be held by video link on 5 October 2023.

VII. In the preliminary opinion that accompanied the summons (Articles 15(1) and 17(2) RPBA), the Board, in essence, agreed with the Opposition Division's conclusions, except with regard to sufficiency of disclosure. On that matter, the Board's preliminary opinion was negative with regard to all requests.

VIII. Claim 1 of the main request (request 1A) reads:

An apparatus which is operable for use in detecting and identifying vehicles,

where individual vehicles each have thereon at least one RFID communication device with a directional device antenna close to the surface on which the vehicles travel, the radiation pattern of each device antenna being directed parallel to the direction of vehicle travel, and each RFID communication device on a vehicle is operable, if correctly operational, to backscatter a modulated UHF signal to the apparatus indicating that particular vehicle's identity,

the apparatus including an RFID reader, the RFID reader having a reader antenna which is operable to be positioned on or in the surface on which the vehicles travel,

the reader antenna and the device antenna defining a read zone, and

the RFID reader being operable, while an RFID communication device of a vehicle is

in the read zone, to transmit a signal to the said RFID communication device and, if the said RFID communication device is correctly operational, to receive the modulated backscattered UHF signal from the said RFID communication device indicating that particular vehicle's identity, such that that vehicle is thereby identified using the apparatus,

wherein the radiation pattern of the reader antenna has a shape which approximates a wide and low elliptic torus located on or just above the surface on which the vehicles travel and centred on the reader antenna's location such that a region of space is within the read zone,

the said region of space:

- extending from approximately 5 m horizontally before the RFID reader antenna to approximately 5 m horizontally beyond the RFID reader antenna in the direction of vehicle travel,*
- being approximately 4 m wide horizontally, perpendicular to the direction of vehicle travel, and*
- extending from approximately 200 mm to approximately 1200 mm vertically above the surface on which the vehicles travel.*

IX. Claim 1 of each of the auxiliary requests adds further limitations to claim 1 of the main request.

- X. The sections of the Board's preliminary opinion that are relevant for this decision read:

...

Sufficiency of disclosure

8. Claim 1 of the request 1A defines an apparatus for use in detecting and identifying vehicles, each vehicle having thereon at least one RFID communication device with a directional device antenna close to the surface on which the vehicle travels.

9. The apparatus is defined as including *an RFID reader having a reader antenna operable to be positioned on or in the surface on which the vehicles travel.*

10. The reader antenna is defined by reference to the radiation pattern it produces: *wherein the radiation pattern of the reader antenna has a shape which approximates a wide and low elliptic torus located on or just above the surface on which the vehicle travel and centered on the reader antenna's location.*

11. The opponent argues that the claim merely defines a result to be achieved (the radiation pattern) and that the patent does not provide sufficient information for the skilled person to implement an antenna having such a radiation pattern, which is furthermore not precisely defined.

12. Before the opposition division, the proprietor referred to figure 27 and paragraph [0087] as providing guidance to the skilled person.

13. It is true that paragraph [0087] of the patent states that an antenna producing a pattern of generally similar shape to that of an upright dipole antenna may be referred to as an "adapted dipole antenna". Paragraph [0087] also states that details "of antenna design adaptation/reconfiguration for the purpose of, for example, providing a desired antenna radiation pattern (and how this can be done) will be familiar to those skilled in the art and therefore need not be discussed in detail."

14. However it is also true that paragraph [0087] says that the term "adapted dipole" refers to the similarity of the radiation pattern produced to the one produced by an upright dipole antenna and that "the actual structure and configuration of the antenna itself may differ (possibly considerably or totally) from that of a traditional dipole antenna."

15. The Board doubts that it would be self-evident to the skilled person how to implement a reader antenna to be positioned on or in the surface on which the vehicles travel, so as to create an antenna pattern as defined in the claim 1. It would appear that undue burden would be imposed on the

skilled person provided only with information on the result intended to be achieved, as the evidence provided by the annexes to the statement of grounds of appeal of the proprietor suggests.

16. In this context, it does not help that even this result, i.e. the radiation pattern of the reader antenna, is not precisely defined in the claim, but instead is defined by means of vague and relative terms, such as "approximate", "wide", "low", "just above", or by employing terms requiring interpretation, such as "elliptic torus", a term disclosed in paragraph [0087] as a "(flattish) generally toroidal shape" and "similar to the shape of a donut that has been dropped on the ground and squashed/flattened somewhat."

17. The further definition in the claim of "a region of space within a read zone" as having "approximate" dimensions within certain ranges also does not help, not only because of the definition of these dimensions as merely approximate, but also because the claim does not define how said read zone, or said region of space within said read zone, is defined in relation to said the radiation pattern of the reader antenna.

18. Therefore the patent does not disclose the invention as defined in claim 1 of the main request 1A in a manner sufficiently

clear and complete for it to be carried out by the skilled person.

19. The considerations above would appear to apply to all the requests on file.

...

- XI. On 25 September 2023, the proprietor announced that they would not attend the oral proceedings.
- XII. No substantive submissions were made by either party following the summons.
- XIII. On 29 September 2023, the parties were informed that the oral proceedings had been cancelled.
- XIV. Subsequently, the opponent requested apportionment of costs, arguing that they had been informed of the cancellation of the oral proceedings only seven days before they were to take place, and that preparatory work had already been undertaken. Concretely, the opponent requested that the proprietor be ordered to pay for the professional time invested in preparing for oral proceedings, between 25 and 28 September 2023, corresponding to a total cost of €3360. No oral proceedings were requested on this matter.
- XV. The Board invited the proprietor to comment on the request for apportionment of costs, within a period of two months.

XVI. No comments were received.

XVII. Subsequently, in a communication under Rule 100(2) EPC, the Board expressed its preliminary opinion that the opponent's request for cost apportionment should be rejected, and set a period of two months for the parties to submit any reply to that communication.

XVIII. The relevant parts of that communication under Rule 100(2) EPC read:

...

Board's preliminary view

8. As a rule, each party to opposition appeal proceedings bears the costs it incurs. However, the Board has discretion to order, for reasons of equity, a party to pay some or all of another party's costs (Articles 104(1) and 111(1) EPC; Article 16(1) RPBA).

9. Such a different apportionment of costs may be justified, in particular when costs have arisen from culpable actions of an irresponsible or malicious or nature (CLBA, III.R.2.), or other abuse of procedure (Article 16(1) (e) RPBA).

10. The Board is not persuaded that any abuse of procedure has occurred, or that an apportionment of costs would be equitable.

11. First, under the principle of party disposition expressed in Article 113(2) EPC, a party is entitled to withdraw a request at any time during pending proceedings. Except for where the exercise of the rights conferred by this principle contravene a party's obligation to act in good faith (as exemplified in Article 16(1) RPBA), this principle may not be restricted by the threat of a different apportionment of costs. In the present case, there is no indication, let alone evidence, that the proprietor acted with the intention to cause harm.

12. Second, there is also no indication that the proprietor did not announce their non-attendance of the oral proceedings at the first opportunity. A reaction within two months of notification of the summons to oral proceedings seems reasonable, especially if account is taken of the fact that the summons was sent out over the summer period. In that sense, the situation is different from that in T 212/07, where it could be inferred that the party concerned could have foreseen their inability to attend the oral proceedings well in advance of their announcement of non-attendance.

13. Third, the withdrawal of the proprietor's request for oral proceedings, albeit just ten days in advance of the oral proceedings, still lead to their

cancellation. It has then contributed rather to the opponent saving costs.

14. It is additionally noted that, in the present case, oral proceedings had been scheduled to take place by video link. The circumstances were, therefore, also in that regard, significantly different from those in T 212/07, since there the costs that were apportioned were travel and lodging costs that could no longer be recovered.

15. All in all, the Board is not persuaded that the costs that the opponent requests be apportioned to the proprietor arose from actions of an irresponsible, malicious or abusive nature of which the proprietor can be held culpable.

16. In view of the above and of the communication accompanying the summons for oral proceedings, the Board envisages dismissal of the proprietor's appeal and rejection of the opponent's request for apportionment of costs.

XIX. No replies were received within the period set in this communication.

Reasons for the Decision

Insufficiency of disclosure - All requests

1. The preliminary opinion, partly reproduced above, expressed and explained the Board's view that the subject-matter of claim 1 of all requests on file was not sufficiently disclosed.
2. The proprietor has not commented on, let alone contested, this preliminary opinion. Nor has the opponent made any substantive submission.
3. After further consideration, the Board sees no reason to depart from its preliminary opinion.
4. As explained under points 13 to 16 of the preliminary opinion, the reader antenna of the apparatus for detecting and identifying vehicles defined in claim 1 of the main request, is only vaguely disclosed in the patent as an "adapted dipole antenna", described in terms of the shape of the radiation pattern it produces itself unclearly defined, without any indication of how such a pattern could be obtained.
5. Implementing such an antenna would impose an undue burden on the skilled person, especially in view of the further requirement, defined in the claim, that the antenna also be adapted to be positioned on or in the surface on which the vehicles travel.
6. Claim 1 of each of the auxiliary requests suffers from the same deficiency, as it either requires the skilled person to implement the same reader antenna as for the main request, or adds further details to the radiation pattern, thus adding further to the burden on the

skilled person, since the basis for the implementation is the same deficient disclosure.

7. It must, therefore, be concluded that the patent does not disclose the subject-matter defined in claim 1 of any of the requests in a manner sufficiently clear and complete for it be carried out (Article 83 EPC).
8. In the absence of an allowable request, the proprietor's appeal must be dismissed.

Request for apportionment of costs

9. In the preliminary opinion, partly reproduced above, the Board expressed and explained the view that the opponent's request for apportionment of costs was not justified.
10. The opponent has not commented on, let alone contested, this preliminary opinion. Nor has the proprietor made any submissions.
11. After further consideration, the Board sees no reason to depart from its preliminary opinion.
12. Consequently, the opponent's request for apportionment of costs is to be rejected.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The opponent's request for apportionment of costs is rejected.

The Registrar:

The Chair:



D. Meyfarth

P. Scriven

Decision electronically authenticated