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**Datasheet for the decision
of 25 July 2023**

Case Number: T 1411/21 - 3.4.02

Application Number: 18179777.0

Publication Number: 3422299

IPC: G07C5/00

Language of the proceedings: EN

Title of invention:

METHOD, SERVER, COMPUTER PROGRAM, VEHICLE AND SYSTEM FOR
DETERMINING A TECHNICAL STOP OF A VEHICLE

Applicant:

Targa Telematics S.p.A.

Headword:

Relevant legal provisions:

EPC Art. 113(1), 56

EPC R. 137(3)

RPBA 2020 Art. 12(6)

Keyword:

Right to be heard - substantial procedural violation (no)
Amendments of application - consent of examining division (no)
Late-filed request - admitted in first-instance proceedings
(no) - should have been submitted in first-instance
proceedings (yes)
Inventive step - (no) - mixture of technical and non-technical
features

Decisions cited:

T 0937/09, T 0690/09, T 0996/12, T 0573/12, T 2488/11,
T 0641/00

Catchword:



Beschwerdekammern
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Case Number: T 1411/21 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 25 July 2023

Appellant: Targa Telematics S.p.A.
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Representative: Hoffmann Eitle
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 19 March 2021
refusing European patent application
No. 18179777.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Bekkering
Members: C. Kallinger
G. Decker

Summary of Facts and Submissions

- I. The appellant lodged an appeal against the decision of the examining division refusing European patent application No. 18 179 777.
- II. Oral proceedings were appointed as requested.
- III. In a communication pursuant to Article 15(1) RPBA 2020 the board set out its preliminary opinion.
- IV. With a letter dated 22 June 2023 the appellant filed observations in regard of the board's preliminary opinion and an amended description page.
- V. In a letter dated 24 July 2023 the appellant informed the board that it would not attend the oral proceedings scheduled for 25 July 2023.
- VI. Oral proceedings in absence of the appellant were held on 25 July 2023. At the end of the oral proceedings the chairman announced the decision of the board.
- VII. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the main request or, in the alternative, according to one of auxiliary requests 1 to 3, all requests filed with the statement of grounds of appeal. The main request and auxiliary requests 2 and 3 have already formed the basis of the decision under appeal.

In addition, the appellant claimed that with respect to a possible lack of clarity of claim 1 of the main request, as argued by the examining division in the

decision under appeal, its right to be heard was violated. In this respect, the appellant requested the reimbursement of the appeal fee.

VIII. This decision refers to the following document:

D1 WO 2015/138913 A1

IX. The main request is identical to the main request filed during the first-instance proceedings with a letter dated 11 December 2020 in response to the summons to oral proceedings. Claim 1 of this request reads as follows (amendments in comparison to the previous main request filed on 13 March 2020 that was subject of the examining division's summons to oral proceedings are marked by the board):

1. A method for determining a technical stop of a vehicle at a maintenance centre, the vehicle being included in a fleet of vehicles, the technical stop being generated by a breakdown or by routine or special maintenance, the method comprising the steps of:

- storing (S100) maintenance area information comprising information representing at least one area of a maintenance centre;*
- receiving (S110) position information from said vehicle at least at a first instant comprised in a plurality of time instants;*
- determining (S120) an entry status into a maintenance centre when the position information received at the first time instant is in correlation with said maintenance area information;*
- determining (s130), at the second time instant following the first time instant, a secondary status on the basis of secondary information received from the vehicle, the secondary information representing*

additional information received from the vehicle and the secondary status providing an additional indication that the vehicle is in a stop status, ~~wherein the secondary status indicates a disappearance of a malfunction of the vehicle;~~

- determining (S140) the presence of a technical stop status on the basis of said entry status and said secondary status, wherein determining (S140) the presence of a technical stop comprises confirming the presence of the technical stop based on the secondary status."

X. Claim 1 of auxiliary request 1 reads as follows (amendments in comparison to auxiliary request 1 on which the decision under appeal was based are marked by the board):

"1. A method for determining a technical stop of a vehicle at a maintenance centre, the vehicle being included in a fleet of vehicles, the technical stop being generated by a breakdown or by routine or special maintenance, the method comprising the steps of:

- storing (S100) maintenance area information comprising information representing at least one area of a maintenance centre;

- receiving (S110) position information from said vehicle at least at a first instant comprised in a plurality of time instants;

- determining (S120) an entry status into a maintenance centre when the position information received at the first time instant is in correlation with said maintenance area information;

- determining (s130), at the second time instant following the first time instant, a secondary status on the basis of secondary information received from the vehicle, the secondary information representing

additional information received from the vehicle and the secondary status providing an additional indication that the vehicle is in a stop status;

- determining (S140) the presence of a technical stop status on the basis of said entry status and said secondary status, wherein said secondary information comprises at least one between:

- information indicating a disappearance of a malfunction, wherein the malfunction is ~~preferably~~ a malfunction detected by, or in an electronic on-board device;

- information indicating a situation of malfunctioning."

XI. Claim 1 of auxiliary request 2 reads as follows:

"1. A method for determining a technical stop of a vehicle at a maintenance centre, the vehicle being included in a fleet of vehicles, the technical stop being generated by a breakdown or by routine or special maintenance, the method comprising the steps of:

- storing (S100) maintenance area information comprising information representing at least one area of a maintenance centre;

- receiving (S110) position information from said vehicle at least at a first instant comprised in a plurality of time instants;

- determining (S120) an entry status into a maintenance centre when the position information received at the first time instant is in correlation with said maintenance area information;

- determining (s130), at the second time instant following the first time instant, a secondary status on the basis of secondary information received from the vehicle, the secondary information representing additional information received from the vehicle and

the secondary status providing an additional indication that the vehicle is in a stop status;

- determining (S140) the presence of a technical stop status on the basis of said entry status and said secondary status, wherein

said secondary information comprises at least one between:

- information indicating a disappearance of a malfunction, wherein the malfunction is preferably a malfunction detected by, or in an electronic on-board device;

- information indicating a situation of malfunctioning, and wherein

the method comprises a step of determining an ending of the technical stop based on the secondary status indicating a disappearance of a malfunction of the vehicle."

XII. Claim 1 of auxiliary request 3 reads as follows (amendments compared to claim 1 of auxiliary request 2 marked by the board):

"1. A method for determining a technical stop of a vehicle at a maintenance centre, the vehicle being included in a fleet of vehicles, the technical stop being generated by a breakdown or by routine or special maintenance, the method comprising the steps of:

- storing (S100) maintenance area information comprising information representing at least one area of a maintenance centre;

- receiving (S110) position information from said vehicle at least at a first instant comprised in a plurality of time instants;

- determining (S120) an entry status into a maintenance centre when the position information received at the

first time instant is in correlation with said maintenance area information;

- determining (s130), at the second time instant following the first time instant, a secondary status on the basis of secondary information received from the vehicle, the secondary information representing additional information received from the vehicle and the secondary status providing an additional indication that the vehicle is in a stop status;

- determining (S140) the presence of a technical stop status on the basis of said entry status and said secondary status, wherein

said secondary information comprises at least one between:

- information indicating a disappearance of a malfunction, wherein the malfunction is preferably a malfunction detected by, or in an electronic on-board device;

- information indicating a situation of malfunctioning, and wherein

the method comprises a steps of:

determining an ending of the technical stop based on the secondary status indicating a disappearance of a malfunction of the vehicle;

allocating another vehicle of the fleet that is inactive so as to replace the vehicle that has been determined to be in a stop status and/or programming or modifying a programmed stop status for another vehicle comprised in the fleet and differing from said vehicle for which the presence of a technical stop has been determined."

Reasons for the Decision

1. As announced in its letter dated 24 July 2023, the appellant did not attend the oral proceedings. In accordance with Rule 115(2) EPC and Article 15(3) RPBA 2020, the oral proceedings were held without the appellant. By its decision not to attend the oral proceedings, the appellant has chosen not to make any further submissions during such proceedings. The duly summoned appellant has thus to be treated as relying only on its written case.

2. Main request

2.1 Alleged procedural violation

2.1.1 The examining division exercised its discretion not to admit the main request under Rule 137(3) EPC.

The appellant argued that the examining division had based its discretion, *inter alia*, on an alleged lack of clarity in claim 1 of the main request. In this case, the right to be heard had been violated in at least two respects:

- The last but one sentence on page 4 of the decision under appeal stated in general terms that the broadening of the claim again made "the claimed subject-matter less clear", without, however, giving any substantive reasons as to why claim 1 should lack clarity; the decision was therefore insufficiently reasoned in this respect.
- During the oral proceedings, the appellant wished to discuss the clarity of the claimed subject-matter, but was not heard on this point (see

minutes, point 4.6). Therefore, if the discretion was exercised taking into account the objection of lack of clarity, Article 113(1) EPC was clearly violated.

2.1.2 The board is not convinced by the appellant's arguments for the following reasons.

In its decision (see point 12), the examining division explicitly stated that the *"claimed subject-matter is not converging with respect to the previous claim set, and has been broadened"*. Furthermore, *"[b]roadening the claimed subject-matter clearly does not address the inventive step objection of the annex to the summons"*. The board is therefore of the opinion that the examining division gave sufficient reasons for exercising its discretion under Rule 137(3) EPC. These reasons also appear to have been clear to the appellant, which contested them in its statement of grounds of appeal (see statement of grounds of appeal, point 2.1).

The examining division merely supplemented its reasoning by stating that the broadening of the claimed subject-matter *"moreover render[ed] the claimed subject-matter less clear again"* (emphasis added by the board). As this was presented only as an additional problem caused by the amendments and as the examining division already gave sufficient reasons for the exercise of its discretion (see above), the board considers that the decision is not based on a ground on which the appellant did not have an opportunity to comment (Article 113(1) EPC).

The board therefore finds that the examining division did not commit a procedural violation and that the

request for reimbursement of the appeal fee is therefore to be refused.

2.2 Admission, Article 12(6) RPBA 2020

2.2.1 Under Article 12(6), first sentence, RPBA 2020, the board should not admit requests which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.

2.2.2 The examining division did not admit the main request into the proceedings under Rule 137(3) EPC because

- (i) the subject-matter of claim 1 was not converging and
- (ii) the subject-matter of the claim was broadened and therefore not suitable to address the previously raised inventive step objection.

2.2.3 The appellant argued that the request was filed in due time in response to the summons to oral proceedings and that the examining division's exercise of discretion was incorrect.

In particular, the criterion of convergence of subject-matter applied only to the set of claims of the main request and the auxiliary requests as filed together, but not to a main request filed in preparation for oral proceedings with respect to previously pending requests. If this were not the case, an applicant would be deprived of the right to maintain an earlier request on file - even the originally filed claims - and thus of the fundamental right to have the

board review the first instance decision on that request (possibly on the originally filed claims). The appellant argued that it should have the right to have a decision on a request that was broader than the one on which the summons was based.

In addition, the main request was an attempt to overcome the inventive step objection and was filed in response to the summons and with the aim of specifying that the detection was based on two levels of information, i.e. the entry information and the confirmation that the stop was technical on the basis of secondary information received from the vehicle.

2.2.4 The board is not convinced by the appellant's arguments for the following reasons.

Rule 137(2) EPC gives the applicant the right to amend the application on their own volition in response to specified communications by the EPO. According to Rule 137(3) EPC, no further amendment may be made without the consent of the examining division. In the present case, the appellant had already amended the claims on file twice (in response to the EESR and in response to a communication from the examining division). It was therefore within the examining division's discretion to admit a new request.

The fact that the appellant filed the main request before the final date set by the examining division under Rule 116(1) EPC does not mean that the examining division had no discretion under Rule 137(3) EPC (see T 937/09, point 3.5 of the reasons).

As regards the appellant's statement that it had never made any statements to the effect that any subject-

matter could be considered abandoned, the board notes that a non-admission under Rule 137(3) EPC does not automatically revive the previous set of claims that the examining division had agreed to admit, unless an applicant has indicated that they were relying on them as an auxiliary request (see T 690/09, point 8 of the reasons). On the contrary, the filing of a new main request automatically results in the replacement and, in legal terms, the withdrawal of any previous main requests (see T 996/12, point 4 of the reasons; T 573/12, point 3.6 of the reasons).

The convergence (or the divergence) of requests is in principle an accepted criterion for deciding on the admissibility of requests under Rule 137(3) EPC. It applies not only within a set of claim filed together but also with respect to earlier requests (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022 ("Case Law"), IV.B.2.4.4).

The board agrees with the examining division that the subject-matter of amended claim 1 has been broadened, since the feature *"wherein the secondary status indicates a disappearance of a malfunction of the vehicle"* has been deleted compared to the previously filed main request.

The board also agrees with the examining division that the added feature, i.e. that *"determining (S140) the presence of a technical stop comprises confirming the presence of the technical stop based on the secondary status"*, does not add any additional limitation to the claimed subject-matter which already specifies that a technical stop status is determined based on the secondary status and the secondary status provides an additional indication that the vehicle is in a stop status.

Therefore, claim 1 was not convergent with the previously filed main request.

For the same reasons, the board agrees with the examining division that the amendments made to claim 1 resulted in a broadening of the claimed subject-matter and were therefore not suitable to address the inventive step objection that had been raised by the examining division against claim 1 of the previous main request.

The board is therefore of the opinion that the examining division exercised its discretion under Rule 137(3) EPC in accordance with the right principles. The board also sees no other circumstances of the appeal case which would justify the admittance of the main request.

Consequently, the main request is not to be admitted into the proceedings under Article 12(6) RPBA 2020.

3. Auxiliary request 1 - Admission, Article 12(4) and (6) RPBA 2020

3.1 The appellant argued that this amendment was in response to the examining division's comment that the claim was not limited to the features following this expression (see statement of grounds of appeal, point III.1).

3.2 The board is of the opinion that it is well known that features labelled as "preferably" are not limiting. Therefore, the corresponding remark of the examining division (see decision, point 13.3) cannot be a

justification for filing this amendment only with the statement of grounds of appeal. Therefore, this amendment could and should have been filed already during the first-instance examination proceedings (Article 12(6), second sentence, RPBA 2020).

Furthermore, the examining division already discussed the option that the malfunction was detected by an electronic on-board device and found that this did not contribute to the presence of an inventive step (see decision, point 13.4). The board agrees with the examining division's reasoning and is of the opinion that this amendment is not suitable to overcome the objection of lack of inventive step (Article 12(4), last sentence, RPBA 2020).

For these reasons, auxiliary request 1 is not to be admitted into the proceedings under Article 12(4) and (6) RPBA 2020.

4. Auxiliary request 2 - Inventive step

Claim 1 of auxiliary request 2, as filed with the statement of grounds of appeal, is identical to claim 1 of auxiliary request 2 on which the decision under appeal was based. It is therefore part of the appeal proceedings, Article 12(2) RPBA 2020.

4.1 D1 as closest prior art

4.1.1 The appellant argued that a person skilled in the art would not consider D1 as the closest prior art, since that document dealt with monitoring the use of spaces by collecting positional information of vehicles.

However, D1 was not even remotely concerned with how to determine the downtime of vehicles.

4.1.2 The board is not convinced by the appellant's argument because D1 discloses a system for gathering data from a vehicle (including car diagnostics and location of the vehicle) at a central server for further use, e.g. to track or determine vehicle usage (see paragraph [0007]). D1 is therefore a valid starting point for assessing inventive step.

4.2 Differences

4.2.1 Document D1 discloses the following features of claim 1 (non-disclosed features marked by the board by strike-through):

A method for [gathering data] ~~determining a technical stop~~ of a vehicle ~~at a maintenance centre~~ (see paragraph [0011]), the vehicle being included in a fleet of vehicles (see paragraph [0011]), ~~the technical stop being generated by a breakdown or by routine or special maintenance,~~ the method comprising the steps of:

- storing (S100) ~~maintenance~~ area information comprising information representing at least one area of a ~~maintenance centre~~ defined location (see paragraph [0015], geo-fence 50);*
- receiving (S110) position information from said vehicle at least at a first instant comprised in a plurality of time instants (see paragraph [0005]: GPS receiver 14);*
- determining (S120) an entry status into a ~~maintenance centre~~ defined location when the position information received at the first time instant is in correlation with said ~~maintenance~~ area information (see paragraph*

[0015]: server 30 compares the vehicle 11 location to the geo-fence 50);

- determining (s130), at the second time instant following the first time instant, a secondary status on the basis of secondary information received from the vehicle, the secondary information representing additional information received from the vehicle (see paragraph [0005]: onboard diagnostic port OBD) ~~and the secondary status providing an additional indication that the vehicle is in a stop status;~~
- ~~determining (S140) the presence of a technical stop status on the basis of said entry status and said secondary status, wherein~~
 - said secondary information comprises at least one between (see paragraph [0005]: car diagnostics (from OBD)):
- information indicating a disappearance of a malfunction, wherein the malfunction is preferably a malfunction detected by, or in an electronic on board device;
- information indicating a situation of malfunctioning, ~~and wherein~~
~~the method comprises a step of determining an ending of the technical stop based on the secondary status indicating a disappearance of a malfunction of the vehicle.~~

4.2.2 The appellant argued that D1 did not disclose that diagnostic data can be combined with geofencing information in order to detect downtime of a vehicle (see statement of grounds of appeal, point III.2).

4.2.3 The board agrees with this assessment and is of the opinion that these differences are reflected in claim 1 by the features marked above by strike-through, i.e. the definition of the presence of a technical stop when

the vehicle is at a maintenance centre and sends information indicating a situation of malfunctioning.

4.3 Technical effect and problem to be solved

4.3.1 The appellant argued that, starting from document D1, the effect of the differentiating features was to simply and accurately detect downtime of vehicles belonging to a fleet. Therefore, the objective technical problem was to implement an automatic detection of downtime of vehicles of a fleet.

With regard to technicality, the appellant argued (see statement of grounds of appeal, point I.8.1) that means such as geofencing, position and diagnostic data were undisputedly technical.

Furthermore, it was true that the background section of the application as filed (see description, page 1) started discussing the general case wherein "a vehicle becomes unavailable for use". However, in the later part of the description, and in particular in the discussion of the invention, the focus was on the specific case of a technical stop due to a malfunction or maintenance.

The appellant further argued that, although the background section of the description contained a general definition with respect to stops due to non-technical reasons, the invention as claimed focused on stops caused by technical faults or technical maintenance. Since the claims defined the stop only in relation to parameters related to a technical malfunction or a technical maintenance, the feature "*technical stop*" was technical and contributed to the presence of an inventive step.

Moreover, the claimed solution was also technical because it had the technical effect of determining the presence and/or duration of a technical stop not only automatically, but also simply and accurately, since it was not necessary to rely on erroneous manual notifications or to install several sensors in different locations.

The disclosed solution was the result of technical considerations that went beyond those necessarily required for the mere writing of a program in a computer language. In the prior art, a notional non-skilled person would rely on non-technical rules and means in implementing the detection of a technical stop, such as making inquiries and orally reporting a technical stop of a vehicle that had entered a maintenance centre. In contrast, the proposed solution required that technical means, such as geofencing data and vehicle diagnostic data, be combined to determine a technical stop. The determination of whether a vehicle was in the maintenance centre was based on the fact that a malfunction was present. The invention focused on how to detect this fact, which required technical knowledge. The appellant argued that, contrary to the examining division's reasoning, the implementation of this determination belonged to the realm of the technically skilled person and not to that of a notional business person or of any other non-technically qualified person. Therefore, the experience and common sense - and similarly, a heuristic approach - of such non-technical persons could not be relied upon to establish a lack of inventive step.

The appellant further argued that once the presence of a technical stop has been accurately detected, the

maintenance of other vehicles can be reprogrammed so that a sufficient number of vehicles remain in use within the fleet and/or other vehicles can be (re)assigned to users in order to maintain the utilisation of the fleet at an appropriate level. In this way, an efficient use of fleet resources could be achieved, which was a fundamental technical optimisation.

In conclusion, both the problem and the means used to solve it were technical.

- 4.3.2 The board is not convinced by the appellant's arguments for the following reasons.

The features relating to geofencing, position and diagnostic data are indeed technical. However, as explained above, these features are already known from document D1 and therefore cannot contribute to the presence of an inventive step.

With respect to the term *"technical stop"*, claim 1 defines that it is *"generated by a breakdown or by routine or special maintenance"*. As further explained in the application, a *"technical stop"* is a concept used, for example, by long-term hire companies to optimise the efficiency of fleet utilisation (see page 2, first paragraph). Therefore, the board agrees with the examining division that a *"technical stop"* is not a technical feature.

Furthermore, the claimed rule for determining a *"technical stop"* is not based on technical but rather on administrative considerations. In the present case, this rule is defined, for example, by a fleet manager who decides that a *"technical stop"* occurs when a

vehicle is in a maintenance centre while there is a malfunction in the vehicle.

The board agrees that the detection of a malfunction is a technical problem and belongs to the realm of a technically skilled person. However, this detection of a malfunction is already disclosed in document D1, which explicitly states that "*[d]ata may also be collected from an onboard diagnostic port (OBD) that provides data indicative of [...] car diagnostics (from OBD)*" and that this data may be used for "*gathering and compilation of the operation summaries of interest in categorizing the overall operation of the vehicle*" (see D1, [0005]). Therefore, the technical concept of using an OBD system to provide car diagnostics is known from D1. The board also notes that the fact that OBD systems provide data on malfunctions such as a breakdown and routine or special maintenance is well known to the person skilled in the art.

With respect to the determination of a "*technical stop*", the claim defines the following two conditions which must be met simultaneously in order for a "*technical stop*" to be present:

- "*Entry status*": The vehicle is in a maintenance centre.
- "*Secondary status*": Indicating a situation of malfunction.

The board agrees with the examining division's reasoning: the claimed determination is based on a heuristic approach which does not solve any particular technical problem. Such a rule may be based on experience and common sense, but it does not require technical knowledge of the vehicle or the central data collection system. Technical considerations may only come into play when such heuristics or rules are implemented in a technical system.

The board agrees that a programmed technical stop is dictated by technical considerations and that the question of whether a programmed stop can be anticipated or delayed, and to what extent (e.g. in terms of operated km over the programmed ones), will normally be judged by the technically skilled person. However, the claim does not contain any rules which define, for example, on the basis of technical considerations, whether and to what extent such a reprogramming is feasible in order to ensure the operating lifetime of the vehicle. In addition, non-technical rules may well play a role, e.g. balancing the risks of delaying routine maintenance against optimising available fleet capacity.

The board is therefore of the opinion that a "*technical stop*" is not an inherent technical characteristic of a vehicle, but a concept used in fleet management, and that also the rule for defining such a "*technical stop*" is not based on technical considerations.

As regards the further alleged advantages in fleet management, the board notes that the claim does not contain any features in this respect, apart from the fact that the vehicle is part of a fleet. Furthermore, even if this were the case (see also the discussion of auxiliary request 3 below), the board is of the opinion that managing a fleet is not a technical task simply because it involves technical entities (vehicles). A fleet manager who checks and manages the availability of vehicles in a fleet is not performing a technical task but a business task (see also T 2488/11, point 1.4 (ii) of the reasons: stock management is not technical).

As set out above, the differentiating features are considered to be non-technical. The non-technical features of a claim may be incorporated into a goal to be achieved in a non-technical field (see T 641/00, headnote). In the present case, the heuristics or rules used to determine a "technical stop" are provided to the technically skilled person as part of the framework of the objective technical problem. The question of whether the person skilled in the art would "arrive" at the non-technical features does not therefore arise, since those features have been made known to the skilled person as part of the goal to be achieved.

In conclusion, the board is of the opinion that, starting from document D1, the skilled person is faced with the non-technical problem of determining whether a technical stop is present, based on the rule that the vehicle is in a maintenance centre and sends information indicating a malfunction.

4.4 Assessment of inventive step

4.4.1 The appellant argued that although D1 referred to diagnostic data in general, it did not suggest that diagnostic data could be combined with geofencing data, and even less that the combination of these two pieces of information could lead to an effective and efficient detection of the downtime of a vehicle.

4.4.2 The board is not convinced by the appellant's arguments and agrees with the examining division's assessment (see in particular points 13.5 and 26 of the decision).

In inventions containing technical and non-technical features, the latter cannot contribute to the presence of an inventive step.

The relevant question for assessing the inventive step is therefore whether it would be obvious to the skilled person to implement a technical solution corresponding to the claimed subject-matter.

In the present case, the skilled person has at their disposal the system of document D1 in which location information, geo-fencing and vehicle diagnostic data are sent from a vehicle of a fleet to a central server for further use (see point 4.1 above). In order to solve the problem defined above (see point 4.3 above), the person skilled in the art only has to implement the rules for determining the presence of a "*technical stop*" in the computer system, which is well within the routine capabilities of the person skilled in the art and does not contribute to the presence of an inventive step.

In conclusion, the board is of the opinion that the subject-matter of claim 1 of auxiliary request 2 does not involve an inventive step with respect to document D1 (Article 56 EPC).

- 5. Auxiliary request 3 - Inventive step
 - 5.1 Claim 1 of auxiliary request 3 now on file is identical to claim 1 of auxiliary request 3 on which the decision under appeal was based. It is therefore part of the appeal proceedings, Article 12(2) RPBA 2020.
 - 5.2 Compared to claim 1 of auxiliary request 2, the following step has been added to the method of claim 1:

"... allocating another vehicle of the fleet that is inactive so as to replace the vehicle that has been determined to be in a stop status and/or programming or modifying a programmed stop status for another vehicle comprised in the fleet and differing from said vehicle for which the presence of a technical stop has been determined."

- 5.3 The appellant argued that the amendment highlighted the technical purpose of the claimed solution in relation to the control of fleet resources in order to maintain a certain level of transportation capacity of the fleet. The added features made it possible to maintain the overall transportation capacity. Thus, a better use of resources was achieved.

The added features were based on technical considerations and served the technical object of controlling the fleet resources and should therefore be taken into account when assessing the inventive step.

The objective technical problem could be seen as how to provide an optimised control of the vehicles in a fleet in order to maintain an overall transportation capacity that is largely unaffected, even in the face of possible vehicle downtimes.

Since the added features were not known from the prior art, the claimed solution was not obvious.

- 5.3.1 The board is not convinced by the appellant's arguments for the following reasons.

Assigning another vehicle or modifying a programmed stop status for another vehicle comprised in the fleet is an administrative/business task because it depends

on the definition of a *"technical stop"* which, as set out above, is not a technical feature but a concept that depends on non-technical considerations. It is therefore based on business or administrative rules and also serves a business purpose (better use of resources).

In this respect, the appellant referred to the technicality of making better use of the overall transmission capacity in a communications network with a number of terminals. While this example may relate to a technical purpose (better use of communication resources), the board is of the opinion that the better use of vehicles in a fleet (e.g. a rental fleet) purely serves a business purpose (see e.g. application, page 2, first paragraph: *"efficiency in exploiting the vehicle fleet"*).

In conclusion, the board is of the opinion that the subject-matter of claim 1 of auxiliary request 3 does not involve an inventive step with respect to document D1 (Article 56 EPC).

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



L. Gabor

R. Bekkering

Decision electronically authenticated