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**Datasheet for the decision
of 14 October 2014**

Case Number: T 0825/10 - 3.5.04
Application Number: 01272349.0
Publication Number: 1353503
IPC: H04N5/225, H04N5/77, H04N7/173,
G06F17/30, G09B29/00
Language of the proceedings: EN

Title of invention:

INFORMATION PROCESSOR, INFORMATION PROCESSING METHOD, MACHINE-
READABLE RECORDING MEDIUM WITH CONTROL INFORMATION ON CONTROL
OF INFORMATION PROCESSOR RECORDED THEREIN, AND IMAGE PROCESSOR

Applicant:

Sony Corporation

Headword:

Relevant legal provisions:

EPC Art. 123(2)
EPC 1973 Art. 56

Keyword:

Amendments - added subject-matter (yes) (main request)
Inventive step - (yes) (auxiliary request)

Decisions cited:

Catchword:



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Case Number: T 0825/10 - 3.5.04

**D E C I S I O N
of Technical Board of Appeal 3.5.04
of 14 October 2014**

Appellant: Sony Corporation
(Applicant) 1-7-1 Konan
Minato-ku
Tokyo (JP)

Representative: Horner, David Richard
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 3 November 2009
refusing European patent application
No. 01272349.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman F. Edlinger
Members: M. Paci
T. Karamanli

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing European patent application No. 01 272 349.0 published in accordance with Article 158(3) EPC 1973 as EP 1 353 503 A1.

- II. The following prior-art documents cited during the proceedings before the examining division are of relevance to the present decision:

E1: US 6 133 947 A and
E2: EP 1 024 347 A1.

- III. The application was refused on the grounds that claims 1, 6 and 11 did not meet the requirement of clarity of Article 84 EPC and that their subject-matter did not involve an inventive step in view of document E1 alone or in combination with document E2.

- IV. With the statement of grounds of appeal the appellant filed new sets of claims according to a main and first and second auxiliary requests.

- V. In a communication under Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal of the EPO, OJ EPO 2007, 536) annexed to the summons to oral proceedings the board questioned whether claim 1 according to these requests complied with the requirements of Article 84 EPC 1973 and Article 123(2) EPC. The board also indicated that it was inclined to regard the subject-matter of claim 1 according to these requests as not involving an inventive step in view of E1 alone or in combination with E2.

- VI. With a letter of 8 September 2014 the appellant submitted amended claims 1 to 11 according to a main request and claims 1 to 9 according to an auxiliary request, replacing all previous claims on file. The appellant also informed the board that it would not be attending the oral proceedings.
- VII. Oral proceedings were held on 14 October 2014, at the end of which the board's decision was announced. The appellant did not attend.
- VIII. The appellant's final requests are that the decision under appeal be set aside and that a patent be granted on the basis of the following documents:

Description:

Pages 2, 10 to 26 filed on entry into the regional phase before the EPO.

Pages 1, 9, 27 filed with the letter of 12 March 2007.

Pages 3, 3c filed with the letter of 5 June 2008.

Pages 3a, 3b filed with the fax of 16 September 2009 as part of the first auxiliary request.

Claims:

No. 1 to 11 of the main request filed with the letter of 8 September 2014 or, if the main request cannot be granted,

No. 1 to 9 of the auxiliary request filed with the letter of 8 September 2014.

Drawings:

Sheets 1/9 to 9/9 filed on entry into the regional phase before the EPO.

IX. Claim 1 according to the appellant's **main request** reads as follows:

"A mobile image processing and display apparatus comprising:

imaging means (111) for picking up a desired image;
position data determining means for generating positional data (<poi>) corresponding to the desired image;

removable data storage means (140) for storing the desired image and a positional information file that includes a link (<linkfile>) to the desired image, the positional data (<poi>) corresponding to the desired image, and map data reference information relating to the positional data and including a locator (href) of a remote map data store containing map data relating to the positional data corresponding to the desired image;

communication means (150) for enabling the apparatus to communicate with a remote location;

map data acquiring means for causing the communication means (150) to acquire, from the remote map data store, the map data relating to the positional data corresponding to the desired image, the map data being of a predetermined format;

information processing means (115) for performing predetermined processing based on said positional data and said map data relating to the positional data corresponding to the desired image so as to form, using said positional information file, an output signal that enables both an image (200) corresponding to said map data and said desired image (203) to be displayed simultaneously;

display means (131) for displaying said output signal; and

a position specifying means for specifying a position indicated by said positional data on said acquired map data; wherein:

said map data reference information also includes a format of the map data, and a size of the map data;

said positional information file includes a plurality of said map data reference information for one desired image and positional data; and

the apparatus comprises a map data reference information selecting means for selecting one map data reference information from said plurality of map data reference information in dependence on which of said plurality of map data reference information corresponds to map data that is able to be displayed by said display means; and said map data acquiring means is operative to acquire one map data based on said selected map data reference information."

- X. Claim 1 according to the appellant's **auxiliary request** reads as follows (additions to claim 1 of the main request are underlined, deletions are ~~struck through~~):

"A mobile image processing and display apparatus comprising:

imaging means (111) for picking up a desired image; positional data determining generating means for generating positional data (<poi>) corresponding to the desired image, the positional data indicating a position of a location where the desired image was picked up;

removable data storage means (140) for storing the desired image and a positional information file supporting a plurality of apparatuses, the positional information file including ~~that includes~~ a link (<linkfile>) to the desired image, the positional data (<poi>) corresponding to the desired image, and map

data reference information relating to the positional data and including a ~~locator (href) of a remote map data store~~ URL of a file on a network containing map data relating to the positional data corresponding to the desired image;

communication means (150) for enabling the apparatus to communicate with ~~a remote location~~ the network;

map data acquiring means for causing the communication means (150) to acquire, from the ~~remote map data store network~~, the map data relating to the positional data corresponding to the desired image, the map data being of a predetermined format;

information processing means (115) for performing predetermined processing based on said positional data and said map data relating to the positional data corresponding to the desired image so as to form, using said positional information file, an output signal that enables both an image (200) corresponding to said map data and said desired image (203) to be displayed simultaneously with said desired image superimposed on the image corresponding to said map data;

display means (131) for displaying said output signal; and

a position specifying means for specifying a position indicated by said positional data on said acquired map data; wherein:

said map data reference information also includes a format of the map data, and a size of the map data;

said positional information file includes a plurality of said map data reference information for one desired image and positional data; and

the apparatus comprises a map data reference information selecting means for selecting one map data reference information from said plurality of map data reference information in dependence on which of said

plurality of map data reference information corresponds to map data that is able to be displayed by said display means; and said map data acquiring means is operative to acquire one map data based on said selected map data reference information."

Claim 5 according to the appellant's **auxiliary request** reads as follows:

"An image processing and display method carried out in a mobile image processing and display apparatus, the method comprising:

picking up (111) a desired image;

generating positional data (<poi>) corresponding to the desired image, the positional data indicating a position of a location where the desired image was picked up;

storing in removable data storage means (140) the desired image and a positional information file supporting a plurality of apparatuses, the positional information file including a link (<linkfile>) to the desired image, the positional data (<poi>) corresponding to the desired image, and map data reference information relating to the positional data and including a URL of a file on a network containing map data relating to the positional data corresponding to the desired image;

acquiring (150), from the network, the map data relating to the positional data corresponding to the desired image, the map data being of a predetermined format;

performing (115) predetermined processing based on said positional data and said map data relating to the positional data corresponding to the desired image so as to form, using said positional information file, an output signal that enables both an image (200)

corresponding to said map data and said desired image (203) to be displayed with said desired image superimposed on the image corresponding to said map data;

displaying (131) said output signal; and

specifying a position indicated by said positional data on said acquired map data; wherein:

said map data reference information also includes a format of the map data, and a size of the map data;

said positional information file includes a plurality of said map data reference information for one desired image and positional data; and

said method further comprises:

selecting one map data reference information from said plurality of map data reference information in dependence on which of said plurality of map data reference information corresponds to map data that is able to be displayed by said mobile image processing and display apparatus; and acquiring one map data based on said selected map data reference information."

Claim 9 according to the appellant's **auxiliary request** reads as follows:

"A machine readable storage medium storing control information for a mobile image processing and display apparatus that enables the apparatus to carry out a method according to any one of claims 5 to 8."

Claims 2 to 4 are dependent on claim 1. Claims 6 to 8 are dependent on claim 5.

XI. The examining division's reasoning in the decision under appeal regarding claims 1, 6 and 11 according to the sole request then on file can be summarised as follows:

Clarity (Article 84 EPC 1973)

The expression "predetermined processing [...] in accordance to need" in alternative (b) of claims 1 and 6 was unclear because neither the processing nor the needs were defined.

Inventive step (Article 56 EPC 1973)

Document E1 was the **closest prior art** for the subject-matter of claim 1.

The apparatus of claim 1 **differed** from that of E1 by the following features:

- (d1) the apparatus was specifically a mobile apparatus;
- (d2) the map data acquiring means caused communication means to acquire the map data from a remote map data store, the map data relating to the positional data corresponding to the desired image;
- (d3) the positional information file included, for one desired image and positional data, a plurality of map data reference information relating to the positional data and including a locator (href) of a remote map data store containing map data relating to the positional data corresponding to the desired image, and including format and size of the map data;
- (d4) the features defined in alternative (a); and
- (d5) the features defined in alternative (b).

The **objective technical problem** was how to provide users of different mobile devices having limited memory capabilities with a map that could be displayed on

their particular device and that pertained to the point of origin of a determined image.

Since the problem mentioned users of different mobile devices, carrying out the method of E1 in a mobile device was a straightforward measure for fulfilling the needs of any mobile user (e.g. a pedestrian). Hence, the skilled person would have arrived at distinguishing feature (d1).

The problem posed mentioned providing a map that pertained to the point of origin of a determined image. Since E1 taught storing positional data of images, retrieving and displaying map data corresponding to a position, and displaying simultaneously images having positional data corresponding to the map, it would have been obvious, faced with the problem posed, to start from the positional data recorded with a determined image to acquire map data corresponding to that determined (desired) image.

Since the problem further mentioned constraints in terms of memory capabilities, it would have been a straightforward measure in 2000 (year of the priority of the application) for the skilled person, in view of his common general knowledge, to retrieve (acquire) the map data from a remote Internet server (data store) instead of from a CD-ROM. Hence, the skilled person would have arrived at distinguishing feature (d2). A similar design measure was exemplified in E2, which disclosed a method and an apparatus similar to that of E1 and taught acquiring map data from either a DVD-ROM or a remote server (see E2, paragraph [0047]).

After deciding to retrieve map data from a remote server located on the Internet, the skilled person

would then have had to decide on a concrete implementation.

Since a locator of the map data on the remote server inevitably had to be used for retrieving (acquiring) the map data, the skilled person would certainly have contemplated replacing the map data in the positional information file with any useful information including a locator of the map, which inherently identified the remote server (data store).

Since the problem posed mentioned providing maps to different devices and providing specifically a map that could be displayed on a particular device, the skilled person would have realised that said devices could have different capabilities and considered providing different maps having different characteristics (eg format and/or size) depending on the device on which the map was to be displayed. An obvious design option for enabling the selection and the retrieval of a particular map version would have been to keep track of the different map versions linked to the image file and, for each of them, to list their characteristics (format, size) for the selection process and the acquisition process (locator). Hence, the skilled person would have arrived at distinguishing feature (d3).

The skilled person would also have arrived at distinguishing feature (d4) (alternative (a) in claim 1) because in order to provide one of multiple maps, a selection process had to be performed for subsequent acquisition of a map by the apparatus. This selection would have been performed so that the selected map could be displayed on the device

considered. Hence, the skilled person would have arrived at distinguishing feature (d4).

The skilled person would therefore have arrived at the subject-matter of (alternative (a) of) claim 1.

Hence the subject-matter of claim 1 and of corresponding claims 6 and 11 did not involve an inventive step.

XII. The appellant's arguments regarding the issues relevant to the present decision can be summarised as follows:

Main request - added subject-matter (Article 123(2) EPC)

In a communication annexed to the summons to oral proceedings the board questioned whether claim 1 according to the main and first and second auxiliary requests filed with the statement of grounds of appeal complied with the requirements of Article 123(2) EPC, because the word "simultaneously" was not present in the application as filed which, instead, used the word "superimposed" in the same context of the display of images.

In the appellant's view, there was no added subject-matter because the concept of the desired image being displayed simultaneously with the map data was present in the description of the application as filed: see on page 26, lines 1 to 3, the superimposition of the image data over the map data being described as only an "example", and on page 25, lines 15 to 25, the display of the map information and then of the image data, thus providing a basis for simultaneously displaying the map image and the desired image.

Auxiliary request - clarity (Article 84 EPC 1973) and added subject-matter (Article 123(2) EPC)

Claims 1 and 6 according to the auxiliary request had been amended in order to overcome the objections under Article 84 EPC 1973 and Article 123(2) EPC raised in the reasons for the decision or in the board's communication annexed to the summons.

Auxiliary request - inventive step (Article 56 EPC 1973)

It was not disputed that E1 was the closest prior art for the subject-matter of claim 1.

In view of the technical effect of the distinguishing features of claim 1 over E1, the objective technical problem should be formulated as how to facilitate sharing of the image and positional data between mobile devices lacking large storage capacity.

Faced with this problem, the subject-matter of claim 1 would not have been obvious to the skilled person, for at least the following reasons:

1. The apparatus of E1 was essentially a satellite navigation system for a vehicle. At the priority date of 27 December 2000, it would have been very unusual for an in-vehicle navigation system such as that of E1 to obtain its map data from a remote source. As shown in figure 16, E1 described a dynamic navigation system in which the map data was continuously updated as the vehicle moved to different locations. Therefore, it was important that map data was acquired quickly as the vehicle

moved about. In 2000, obtaining maps from a remote server would not have been considered an appropriate option for this type of system.

While E2 described the option of obtaining maps from a server, it restricted map acquisition to a single map per journey: see figure 6 which showed that a single map was displayed, indicating the route from the current location to the destination, and was then not updated during the journey. Hence, the skilled person would have learned from E2 that, if a map was obtained from a remote server instead of local storage, then the navigation system was limited to obtaining a single map at the start of the journey, without subsequently updating the map, which was clearly not what was desired in the system of E1.

These disadvantages would have discouraged the skilled person from using a remote server in the navigation system of E1, even if the teaching of E2 was considered.

2. Even if it was considered obvious to modify E1 to obtain the maps from a server on a network rather than from a CD-ROM, it would still not have been obvious to provide a positional information file that included a link to the desired image and a URL of a file on a network.

It was not disputed that, if map data was stored on a remote server, the apparatus had to store an address indicating how to access the server. However, even if the address of the server had to be stored somewhere, that did not mean that the

URL should be within a positional information file which also contained a link to the image.

In E1, all maps came from the same location (the CD-ROM), and so there was no need to provide a separate indication of the URL of a file on a network for each image in a corresponding positional information file containing the link to the image. If the skilled person wanted to include access to a remote server in E1, he would just store a single address of the server in the apparatus, and would not include the address in the positional information file of each image.

In contrast, in the apparatus of claim 1, by providing for each image a corresponding positional information file which included a URL of a file on a network storing the corresponding map data, then when the image was transferred to a different device which did not have the location of the file on the network stored internally, that device could still use the positional information file to locate the map data. This was not suggested by E1 or E2, neither of which addressed the problem of supporting multiple devices.

3. Moreover, it would not have been obvious from E1 and E2 to provide a positional information file with a plurality of map data reference information for one desired image and positional data, as defined in claim 1.

There was no reason why the remote server would store multiple types of maps; this was by no means required in order to provide a functioning system.

In any case, even assuming that the remote server contained multiple types of maps, there was still no reason why the skilled person would include plural map data reference information in the positional information file stored by the mobile apparatus.

Any particular mobile apparatus would only need one type of map, so the skilled person would not see any need to provide the positional information file at the mobile apparatus with multiple map references.

By providing multiple pieces of map data reference information in the positional information file held by one mobile apparatus, this made it easier to transfer the image to a different mobile apparatus, while enabling each apparatus to acquire map data that it could display. By listing each different map version in the positional information file, then when the image and associated positional information file were transferred between apparatuses via the removable storage means, the information for acquiring a different map suitable for display on the second apparatus was already present and the second apparatus merely had to request it from the remote server. This avoided the remote server needing to identify the technical capabilities of the second apparatus and select a compatible map type, thus reducing the server load and the time required for acquiring the map.

Since neither E1 nor E2 contained any suggestion of supporting multiple apparatuses, let alone any framework for doing so, then without the benefit

of hindsight the skilled person would not have arrived at the subject-matter of claim 1 when starting from E1 and E2.

Hence the subject-matter of claim 1 and of corresponding claims 5 and 9 of the auxiliary request involved an inventive step.

Reasons for the Decision

1. The appeal is admissible.

Admissibility of the main and auxiliary requests

2. The board considers that the amended claims according to the main and auxiliary requests addressed objections under Article 84 EPC 1973 or Article 123(2) EPC raised in the reasons for the decision or in the board's communication annexed to the summons to oral proceedings, did not add complexity to the subject-matter and could reasonably be expected to be dealt with without adjournment of the oral proceedings. For these reasons, the board admitted these requests into the proceedings in accordance with the provisions of Article 13(1) and (3) RPBA.

Main request

3. In its communication annexed to the summons to oral proceedings, the board made *inter alia* the following observations:

"The word 'simultaneously' used in claim 1 was not present in the application as filed. Instead the word 'superimposed' was used (see page 23,

line 20, and page 26, line 1, of the application as filed). The two words are not equivalent because the map data and the desired image may be displayed simultaneously without being superimposed. The broadening from 'superimposed' to 'simultaneously' might thus infringe Article 123(2) EPC, unless it can be regarded as implicit in the original disclosure."

For the reasons given below the board is not convinced by the appellant's arguments (see point XII above) that it was **directly and unambiguously derivable** from the application as filed that the map data and the image data are "displayed simultaneously".

It is undisputed that the word "simultaneously" was not used in the application as filed.

The board considers that the words "simultaneously" and "superimposed" are not equivalent. If the map data and the image data are displayed "simultaneously", then they are both present on screen at the same time, but they may or may not be "superimposed". Hence, at least in that respect, the claimed subject-matter has been broadened.

Whether this broadening from "superimposed" to "simultaneously" complies with Article 123(2) EPC depends on whether it was **directly and unambiguously derivable** from the application as filed that the two images could be displayed simultaneously in a non-superimposed manner, for example next to each other.

The board must answer this question in the negative, because the application as filed consistently discloses that the image data is displayed superimposed on the

map data (see page 23, lines 16 to 21, page 26, lines 1 to 3, and figure 7B). It is not directly and unambiguously derivable from the sentence "For example, when superimposed on the map information 200, the image data 203 is displayed as shown in FIG. 7B." on page 26, lines 1 to 3, that it implies that the two images may be displayed in any other way than superimposed; rather, the expression "For example" may mean that the image data may be positioned superimposed on another region of the map data than the one shown in figure 7B.

Already for the above reasons, the board considers that the subject-matter of claim 1 of the main request does not meet the requirements of Article 123(2) EPC.

Moreover, the expression "displayed simultaneously" has two technically sensible meanings: (1) that the two images are at some point in time both displayed on screen, or (2) that they appear on screen at the same time. Meaning (1) finds some support in the application as filed (although not for its whole breadth, as explained above), because in the superimposed state both images are present on screen at a given time. Meaning (2), however, extends beyond the content of the application as filed because according to the passage on page 25, lines 15 to 25, cited by the appellant, the map data is displayed first and only thereafter is the image data displayed superimposed on the LCD screen.

This provides an additional reason why the expression "displayed simultaneously" in claim 1 does not comply with Article 123(2) EPC.

4. Hence the appellant's main request is not allowable.

Auxiliary request - claim 1

5. Clarity and added subject-matter

The board is satisfied that the amendments made have overcome all the objections under Article 84 EPC 1973 and Article 123(2) EPC raised in the reasons for the decision or in the board's communication. The expression deemed unclear by the examining division was in alternative (b) of claims 1 and 6, which has been deleted.

6. Inventive step

6.1 Closest prior art

The appellant did not dispute that E1 represents the closest prior art for the subject-matter of claim 1. The board agrees.

E1 discloses an image processing and display apparatus (see figure 12) which comprises the following features of the apparatus of claim 1:

- imaging means as defined in claim 1 (see imaging means 4 and 5 in figure 12);
- positional data generating means as defined in claim 1 (see GPS receiver 44, 45 and 46 in figure 12);
- removable data storage means for storing the desired image and a positional information file, the positional data corresponding to the desired image (see column 11, lines 45 to 56, and column 13, lines 53 to 63);
- map data acquiring means for causing communication means to acquire map data relating to the positional data corresponding to the desired image, the map data being of a predetermined format (map data is acquired from CD-ROM 35: see column 11, lines 39 to 45);

- information processing means as defined in claim 1 (see column 11, lines 39 to 52, and figure 11D);
- display means (see 7 and 8 in figure 12); and
- a position specifying means as defined in claim 1 (see figure 11D).

6.2 Distinguishing features

The apparatus of claim 1 thus differs from that of E1 by the following distinguishing features (the **numbering** of which corresponds to that used in the reasons for the decision under appeal and repeated in point XI *supra*):

- (d1) the apparatus is specifically a mobile apparatus [actually, the board is not convinced that this feature really distinguishes the apparatus of claim 1 from that of E1 which is "detachably mounted" in a vehicle (see E1, column 11, lines 15 to 17); however, since this feature has no bearing on the board's reasoning on inventive step, as will be seen below, it can be left open whether it is truly a distinguishing feature];
- (d2) the map data is acquired from the network [in E1 it is acquired from a CD-ROM];
- (d3) the positional information file
 - includes a link to the desired image,
 - includes map data reference information relating to the positional data and including a URL of a file on a network containing map data relating to the positional data corresponding to the desired image,
 - includes a format and a size of the map data, and
 - includes a plurality of said map data reference information for one desired image and positional data and supports a plurality of apparatuses;

(d4) the apparatus comprises a map data reference information selecting means for selecting one map data reference information from said plurality of map data reference information in dependence on which of said plurality of map data reference information corresponds to map data that is able to be displayed by said display means; and said map data acquiring means is operative to acquire one map data based on said selected map data reference information.

6.3 Technical effects and objective technical problem

The above distinguishing features contribute to the following technical effects mentioned in the application as filed:

- (a) The mobile apparatus, despite having a relatively small memory space itself, has access to map data requiring a large amount of memory space (see the paragraph bridging pages 2 and 3 of the application as filed).
- (b) The mobile apparatus has access to map data for a plurality of apparatuses (via a positional information file supporting a plurality of apparatuses: see page 23, lines 8 to 10, of the application as filed).
- (c) The mobile apparatus selects from among several referenced map data one map data which can be displayed by the apparatus (see page 24, lines 9 to 15, and page 25, lines 5 to 10, of the application as filed).

The appellant submitted that the distinguishing features also contribute to the following technical effect:

- (d) Facilitating sharing of an image and associated positional data between apparatuses by transferring the positional information file from one apparatus to another.

This last technical effect is not disclosed in the application as filed. The board, however, accepts the appellant's argument that this technical effect would have been apparent to the skilled person as a consequence of the positional information file supporting a plurality of apparatuses and being stored on a removable data storage means. Indeed, if an image and the associated positional information file are transferred via the removable data storage means from a first apparatus to a second apparatus having a different screen resolution, the positional information file would allow the second apparatus to acquire map data better adapted to its screen resolution.

The board thus accepts that the **objective technical problem** [which is essentially how to achieve technical effects (a) to (d)] can be formulated in summary fashion, as proposed by the appellant, as **how to facilitate sharing of the image and associated positional data between mobile apparatuses lacking large storage capacity.**

6.4 Obviousness

The apparatus of E1 is essentially an improved satellite navigation system for a vehicle. It displays a map acquired from a CD-ROM and indicates the present position of the vehicle on the map. Compared to a conventional navigation system the apparatus of E1 is further improved in that it takes images in the forward direction, stores them together with positional

information, and superimposes a previously stored image on the map when the vehicle comes again to the location where the image was taken, thereby improving the navigation function (see, for instance, column 14, lines 6 to 50).

In the reasons for the decision, the examining division argued that it would have been a straightforward measure in 2000 for the skilled person, in view of his common general knowledge, to retrieve map data from an Internet server instead of from a CD-ROM.

In this respect, the board concurs with the appellant that at the priority date of 27 December 2000 it would have been unusual for an in-vehicle navigation system such as that of E1 to obtain its map data from a remote source. As shown in figure 16, E1 describes a dynamic navigation system in which the map data is continuously updated as the vehicle moves to different locations. Therefore, it is important that map data is acquired quickly as the vehicle moves about.

The examining division further argued that prior-art document E2 taught the skilled person that map data for an in-vehicle navigation system could be acquired from a remote server instead of from a local DVD-ROM (see paragraphs [0044] and [0047]) and that the skilled person would have applied this teaching to the apparatus of E1.

However, in E1 and E2 there is no suggestion of acquiring map data corresponding to the position at which an image was taken instead of the current position of the vehicle.

Regarding this last point, the board notes that the examining division appears to have assumed that the skilled person would nevertheless have wanted to address this situation. Indeed, the examining division defined the objective technical problem as "how to provide users of different mobile devices having limited memory capabilities with a map that can be displayed on their particular device and that pertains to the point of origin of a determined image" and then went on to assume that the skilled person would have wanted to solve this problem ("it would be obvious, facing the problem posed,...").

The board considers that this formulation of the objective technical problem contains elements of the solution which cannot be regarded as given (or obvious) for the skilled person when starting from E1, because there was no reason why the skilled person would have wanted to display a map corresponding to a position at which an image was taken which was not the current position of the vehicle. Hence, the examining division's assumption that the skilled person was aware of this objective technical problem and wanted to solve it was tainted by the knowledge of the present invention (*ex post facto* analysis) rather than merely derived from an objective assessment of E1 and E2.

For the above reasons, the board is not convinced that, starting from E1, it was obvious to a skilled person to acquire map data from a network, using a positional information file as set out in claim 1 (**distinguishing features (d2) and (d3)**). Moreover, the skilled person would have had even less incentive to arrive at the apparatus including the selecting means (**distinguishing feature (d4)**), for the reasons put forward by the

appellant and repeated under points 2 and 3 of section XII *supra*.

7. Hence the subject-matter of claim 1 according to the auxiliary request is not rendered obvious by E1 and E2.

Auxiliary request - claims 2 to 9 and description

8. A similar reasoning applies to the method of claim 5 and the medium of claim 9 which have steps/features corresponding to the features of the apparatus of claim 1.

The board has no objection to dependent claims 2 to 4 and 6 to 8, or to the amended description.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to grant a patent in the following version:

Description:

Pages 2, 10 to 26 filed on entry into the regional phase before the EPO.

Pages 1, 9, 27 filed with the letter of 12 March 2007.

Pages 3, 3c filed with the letter of 5 June 2008.

Pages 3a, 3b filed with the fax of 16 September 2009 as part of the first auxiliary request.

Claims:

No. 1 to 9 of the auxiliary request filed with the letter of 8 September 2014.

Drawings:

Sheets 1/9 to 9/9 filed on entry into the regional phase before the EPO.

The Registrar:

The Chairman:



K. Boelicke

F. Edlinger

Decision electronically authenticated