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

**Case Number:** T 0064/11 - 3.5.03

**Application Number:** 01916107.4

**Publication Number:** 1266456

**IPC:** H04B1/38, H04M1/00, G10L15/26

**Language of the proceedings:** EN

**Title of invention:**  
Hands-free wireless communication in a vehicle

**Patent Proprietor:**  
Cellport Systems, Inc.

**Opponents:**  
Volkswagen Aktiengesellschaft  
Bury GmbH & Co. KG

**Headword:**  
Hands-free wireless communication/CELLPORT

**Relevant legal provisions:**  
EPC Art. 123(2), 84  
RPBA Art. 13(1)

**Keyword:**  
Added subject-matter (yes) - main and first auxiliary requests  
Admissibility (no) -  
second auxiliary request (prima facie not allowable)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
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Case Number: T 0064/11 - 3.5.03

**D E C I S I O N  
of Technical Board of Appeal 3.5.03  
of 14 November 2014**

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 19 November  
2010 revoking European patent No. 1266456  
pursuant to Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman**            F. van der Voort  
**Members:**            T. Snell  
                             R. Cramer

## **Summary of Facts and Submissions**

- I. This appeal was lodged by the proprietor against the decision of the opposition division revoking European patent No. EP 1266456 principally on the ground that claims of a main request and second and fourth auxiliary requests respectively did not comply with Article 123(2) EPC. The proprietor's first and third auxiliary requests were not admitted to the proceedings.
- II. In the notice of appeal, the appellant requested maintenance of the patent [as granted]. In the subsequently filed statement of grounds of appeal, the appellant requested as a "main request" that the decision be overturned in respect of both claim 1 and claim 9 because of procedural violations. The appellant also filed first to eighth auxiliary requests which comprised a mix of alternative versions of claims 1 and/or 9 together with "requests" to the effect that the decision in respect of claim 1 and/or claim 9 be overturned specifically on either procedural or substantive grounds.

In a response to the appeal, opponent I (respondent I) requested that the appeal be dismissed. It was further requested that should the case be remitted to the opposition division, that this be the same opposition division [that issued the impugned decision]. It was further requested not to admit any new requests of the proprietor.

In response to the appeal, opponent II (respondent II) requested that the appeal be dismissed.

All parties conditionally requested oral proceedings.

- III. Together with a letter dated 8 October 2012, the appellant (under new representation) filed a new main request and ten auxiliary requests to replace the requests on file.
- IV. In a communication accompanying a summons to attend oral proceedings, the board gave a preliminary opinion that no procedural violation had occurred. The board indicated that it intended to confine the appeal proceedings to the matters of admissibility of the appellant's requests and/or compliance with Articles 123(2), (3) and 84 EPC. The board further gave a preliminary opinion that claim 1 of the main request and of the first and second auxiliary requests did not comply with Articles 123(2) and 84 EPC. It also stated that it saw no reason to admit the third to tenth auxiliary requests to the proceedings.
- V. In a response to the board's communication, the appellant filed with a letter dated 14 October 2014 an amended main request and submitted arguments in respect of claims 1 and 9. In addition, claims of first to fourth auxiliary requests were filed replacing the auxiliary requests on file.
- VI. Oral proceedings took place on 14 November 2014.

During the oral proceedings, the appellant filed two new auxiliary requests to replace all auxiliary requests on file.

The appellant requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the claims of a main request as filed with the letter of 14 October 2014, or, in the

alternative, on the basis of the claims of either auxiliary request 1 or 2, both as filed during the oral proceedings.

The respondents (opponents) requested that the appeal be dismissed.

At the conclusion of the oral proceedings, after due deliberation, the chairman announced the board's decision.

VII. Claim 1 of the **main request** reads as follows:

"A system (100) for communicating in a vehicle, comprising:  
a communication device (102) for wirelessly receiving and sending information;  
a holding member (104) that releasably supports said communication device (102),  
said holding member (104) being adapted to be mechanically and electrically interconnected to said communication device (102),  
said holding member (104) including an electrical connector (124); and  
an interface module (106) including a first processor (328) and interface module memory (340), said first processor (328) for sending commands and for performing signal processing functions on an audio signal,  
said interface module (106) being additionally capable of  
- receiving digital audio signals from the communication device (102) passed directly from said holding member (104) to the said first processor (328) via a multiplexer (342) being part of the interface module (106) and capable of,  
- operating with said communication device (102) and

said holding member (104), and as well capable of - alternatively operating with another communication device (102) and another holding member (104), wherein said other holding member (104) is adapted to said other communication device (102) with physical and electrical characteristics being different from said communication device (102), and wherein said other holding member (104) is a substitute for said holding member (104);

characterised by

a second processor (320) housed by said holding member (104),  
said second processor (320) being configured to receive communication device control signals from said communication device (102) and to translate said communication device control signals to translated control signals for output of said translated control signals to said first processor (328), said translated control signals being compatible with said interface module (106) and with at least a first communications link comprising a holding member-interface module communications bus (322) between said first processor (328) and said second processor (320) for transmission of said translated control signals; and  
in that said first processor (328) is for sending said commands to said second processor (320) via the holding member-interface module communications bus (322)."

Claim 1 of **auxiliary request 1** reads as follows:

"A system (100) for communicating in a vehicle and being able to use a first communication device (102a) and a second communication device (102b) having at



least physical and electrical characteristics different from the first communication device (102a), the first (102a) and the second communication devices (102b) for wirelessly receiving and sending information, comprising:

a first holding assembly (104a) that releasably supports said first communication device (102a), said first holding assembly (104a) including an electrical connector (124) being adapted to be mechanically and electrically interconnectable to said first communication device (102a) and housing a first holding assembly processor (320) for receiving communication device control signals from said first communication device (102a);

a second holding assembly (104b) that releasably supports said second communication device (102b), said second holding assembly (104b) including another electrical connector (124) being adapted to be mechanically and electrically interconnectable to said second communication device (102b) and housing a second holding assembly processor for receiving communication device control signals from said second communication device (102b),

wherein said second holding assembly (104b) and said second communication device (102b) are substitutes for said first holding assembly (104a) and said first communication device (102a);

an interface module (106) including at least an interface module processor (328), an interface module memory (340) and a communications link between said interface module processor (328) and said first or second holding assembly processor (320), the interface module (106) being adapted to communicate with each of the first (102a) and the second communication device (102b);

wherein when said first holding assembly (104a) is

connected to the first communication device (102a), said first holding assembly processor (320) translates the communication device control signals from the first communication device (102) to be compatible with said interface module (106) and outputs respective communication control signals to the interface module processor (328), and when as a substitute to the first holding assembly (104a) said second holding assembly (104b) is connected to the second communication device (102b), said second holding assembly processor (320) translates the communication device control signals from the second communication device (102b) to be compatible with said interface module (106) and outputs respective communication control signals to the interface module processor (328), and said interface module (106) processor for performing a number of signal processing functions on an audio signal."

Claim 1 of **auxiliary request 2** is the same as claim 1 of auxiliary request 1 except that the following wording is added to the end of the claim:

", such as to remove noise, as well as acoustic echos and line echos, from audio signals passed between the respective communication device (102a, 102b) and a speaker, as well as from a microphone to facilitate hands-free communications[, ] wherein the interface module (106) processor is a digital signal processor for sending and receiving commands transmitted over a pocket IM-communications bus".

## **Reasons for the Decision**

1. *Alleged procedural violations*

1.1 In the statement of grounds of appeal, the appellant mentions certain procedural violations allegedly committed by the examining division:

(i) A violation of Article 113(2) EPC with regard to claim 1 of the main request.

(ii) A violation of Article 113(1) EPC with regard to the decision not to admit the third auxiliary request in either an "original" or a "new" version. The board understands this to concern the first and third auxiliary requests forming the basis of the opposition's decision.

(iii) A violation of Article 113(1) EPC, since the decision included reasons (lack of clarity and comprehensibility of the claims) which had not been discussed at the oral proceedings.

1.2 At the oral proceedings before the board, the appellant did not wish to comment further on these matters. The board's view on the matters set out in the statement of grounds of appeal is as follows:

1.3 Re (i): Even if the chairman allegedly used a different wording to claim 1 in announcing orally a brief summary of the reasons ("signals being passed directly to the first processor"), this only appears to reflect what the opposition division understood the claim to mean, i.e. a direct path from the holding member to the first processor (the claim states: "passed directly from said holding member (104) to the said first processor (328)"). Hence, the board finds no reason to consider that the opposition division decided on a different

version of claim 1 of the main request than that presented by the patent proprietor, so that no violation of Article 113(2) EPC occurred.

Re (ii): In respect of whether the patent proprietor had an opportunity to comment on the reasons subsequently set out in the written decision for not admitting the first and third auxiliary requests, the board cannot see that an infringement of Article 113(1) EPC took place, since the proprietor was clearly able at the oral proceedings to present arguments as to why the requests should be admitted (cf. the minutes, points 4 and 7).

Re (iii): The appellant argues that clarity and comprehensibility of the claims was not discussed. However, in the board's view, the remark concerning clarity and comprehensibility in the decision (cf. the decision, page 14, third paragraph) is clearly related to the manner in which the requests were initially formulated, i.e. the presentation of an undue number of variants in an unclear way, rather than to specific objections to the claim wording. This matter apparently was discussed (cf. the minutes, point 4). Therefore, the board cannot see that the reasoning was based on matters on which the proprietor was unable to comment.

1.4 The board concludes that there was no substantial procedural violation which would justify remittal of the case to the first instance or reimbursement of the appeal fee, neither of which in any case have been requested.

2. *Technical background*

The present patent concerns hands-free communication in a vehicle. More specifically, it concerns an interface apparatus for building a physical and electrical connection between a communication device, e.g. a mobile phone, and the vehicle. The basic idea of the invention as described in the patent is essentially that a holding member (also called a "pocket" in the description) is provided that releasably supports the communication device and which contains a processor, and that an interface module with its own processor is provided for interfacing between the holding member and the vehicle. The holding member/pocket is adapted to the physical and electrical characteristics of the particular communication device and may be exchanged, whereas the interface module remains in place. This is achieved by the interface module being adapted to operate with different holding members. Inter alia, a bus is provided for passing and translating control and other signals between the processors of the holding member and the interface module.

3. *Main request - admissibility*

3.1 The respondents raised a number of issues with respect to Articles 123(2) and 84 EPC in connection with claims 1 and 9 of the main request. They requested that the request be not admitted, inter alia, as it was prima facie not allowable.

3.2 The board however considered that it was procedurally expedient to admit the request, using its discretion under Article 13(1) RPBA. In view of the board's decision (see below) that the request is not allowable, there is no need to consider the reasons for its admissibility in more detail.

4. *Main request - claim 1 - Article 123(2) EPC*
- 4.1 The standard test for compliance with Article 123(2) EPC is that the amendments must be directly and unambiguously derivable from the application as filed. Where there is doubt or ambiguity, it follows that infringement occurs.
- 4.2 Claim 1 of the main request includes the feature: "said interface module (106) being additionally capable of .... receiving digital audio signals from the communication device (102) passed directly from the holding member (104) to the said first processor (328) via a multiplexer (342) being part of the interface module" (board's underlining).
- 4.3 The board notes that there is no explicit disclosure of this feature in the application as filed. Although the term "directly" occurs in the description on page 10, lines 9-11, here the wording is "Some of the electrical signals passing through the connector 124 are simply carried through the pocket 104 to the electrical connector 136, and thereby are passed on to the interface module 106 directly". In the board's view, the term "directly" in this context refers to signals being passed directly from connector 124 to connector 136 of the pocket (i.e. holding member), which is not the same as what is defined in claim 1 of the main request.
- 4.4 The appellant argued that the term "passed directly" would be understood by the skilled person as meaning "passed without any interference on or conditioning of the signal". As a comparison, the appellant referred to a signal passing through a video recorder without any intervening electrical processing. This interpretation

was said to be supported by the passage on page 24, lines 18-24 in combination with Fig. 3 of the application as filed. Fig. 3 showed that digital data or audio passed directly from the holding member to the multiplexer 342 and onto the interface module processor 328. The skilled person knew that a multiplexer was merely a switch which did not otherwise change the signal.

- 4.5 The board however notes that the referred-to passage of the description does not use the term "passed directly". Further, a figure does not necessarily show all elements of a circuit. Consequently, it is not directly and unambiguously disclosed from Fig. 3 that there are no other components in the signal path, in addition to the multiplexer. Furthermore, a multiplexer may plausibly have other circuits besides a switch. Finally, Fig. 3 shows other signal paths and components, in particular the analogue signal paths between the multiplexer and a CODEC 336. Since these have not been included in claim 1, claim 1 defines an unallowable intermediate generalisation. Further, embodiments are embraced by the claim in which any signal may pass through multiplexer 342 in addition to the digital audio signals, which is not supported by the application as filed.

Consequently, the board concludes that claim 1 of the main request does not comply with Article 123(2) EPC. The main request is therefore not allowable.

5. *First auxiliary request - claim 1 - Article 123(2) EPC*

- 5.1 The admissibility of this request, which is based on claim 9 of the main request, was not objected to by the

respondents. The board admitted the request (Article 13(1) RPBA).

5.2 The last clause of claim 1 reads:

"and said interface module (106) processor [being] for performing a number of signal processing functions on an audio signal".

The proprietor argued that this feature was based on claim 9 as originally filed and page 24, lines 1 and 2.

The board however notes that claim 9 as originally filed defines functions performed by the interface module and not the interface module processor. Moreover, only a single audio signal processing function is mentioned in claim 9 as originally filed, namely "receiving voice inputs using said microphone and converting said voice inputs to digital signals", which apparently is not even carried out by the interface module processor. In this respect, it appears from Fig. 3 that this function is carried out by CODEC 334 of the interface module rather than the interface module processor 328. Page 24, lines 1 and 2 states "[The] interface module microprocessor 328 then may perform a variety of signal processing functions on the audio signal". The board notes however that this feature is described as part of a detailed embodiment wherein the audio signal referred to is that passed from CODEC 336 via multiplexer 342, whereas claim 1 of auxiliary request 1 is generalised to embrace processing of any audio signal. A further passage of the description dealing with audio signal processing by the interface signal processor is at page 4, lines 5 to 16, which reads: "The interface module generally contains a digital signal processor for sending and



receiving commands transmitted over the pocket-IM communications bus, and for controlling other functions. For instance, the digital signal processor of the interface module may perform various signal processing functions to remove noise, as well as acoustic echos [sic] and line echos, from audio signals passed between the telephone and a speaker, as well as from a microphone to facilitate hands-free communications. The digital signal processor may also serve to interpret voice commands issued by a user concerning control of the system. Other potential functions of the interface module digital signal processor include wireless data processing or forwarding, the storage of voice memoranda, text to speech functions, and for interfacing the system to other communication devices ...". However, this passage also does not provide support for carrying out any processing function on any audio signal, as embraced by claim 1.

Consequently, the board concludes that claim 1 of auxiliary request 1 does not comply with Article 123(2) EPC. Auxiliary request 1 is therefore not allowable either.

6. *Auxiliary request 2 - admissibility*

6.1 Claim 1 of the request is based on claim 1 of auxiliary request 1 with further limitations essentially based on the description on page 4. It was submitted at a late stage during the oral proceedings.

6.2 In accordance with Article 13(1) RPBA, "Any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be exercised

in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy."

6.3 A well-established criterion used by the boards of appeal for deciding whether to admit late-filed requests under Article 13(1) RPBA is whether the new claims are prima facie allowable.

6.4 In addition to the fact that the request is late-filed, the board considers further that the amendments made give rise, prima facie, to new objections under Article 84 EPC:

(i) The expression "such as to remove noise, .." can be understood in the sense that the listed signal processing functions are merely optional, leading to unclarity in construing the scope of protection.

(ii) It is unclear whether the "commands transmitted over a pocket IM-communication bus" are the same as the control signals mentioned earlier in claim 1 in respect of the wording ".. and outputs respective communication control signals to the interface module processor".

6.5 Re (i): The appellant argued that it would be clear to the skilled person that the expression "such as to" should be construed as "so as to", ie as limiting the claim. The board however finds this argument to be unconvincing on linguistic grounds.

Re (ii): The appellant argued that it was clear from the description that the commands transmitted over the bus were the aforementioned control signals. However, in the board's view, in order to be admitted, an amendment introduced at a late stage of the procedure

should be prima facie clear by itself without having to resort to the description to resolve ambiguities. In any case, the board can find no explicit indication in the description that the control signals and the commands mentioned in the claim must necessarily be the same signals.

6.6 Bearing in mind that the proceedings had reached an advanced stage and considering that claim 1 of auxiliary request 2 prima facie did not comply with Article 84 EPC, the board held the request to be inadmissible (Article 13(1) RPBA).

7. *Conclusion*

As none of the appellant's requests are allowable, it follows that the appeal has to be dismissed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated