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**Datasheet for the decision  
of 27 March 2018**

**Case Number:** T 0935/15 - 3.2.01

**Application Number:** 08159615.7

**Publication Number:** 1970264

**IPC:** B60R25/20, G07C5/00

**Language of the proceedings:** EN

**Title of invention:**

Remote control method and system, vehicle with remote controllable function, and control server

**Patent Proprietor:**

TOYOTA JIDOSHA KABUSHIKI KAISHA

**Opponent:**

Volkswagen AG

**Headword:**

**Relevant legal provisions:**

RPBA Art. 12(4)

EPC Art. 123(2), 123(3), 56

**Keyword:**

Main Request - not admitted into the proceedings  
Undisclosed subject-matter, extension of scope of protection -  
auxiliary requests 1 to 3 (yes)  
Inventive step - (yes) - patent in amended form according to  
the decision of the opposition division

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 0935/15 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 27 March 2018**

**Appellant II:** TOYOTA JIDOSHA KABUSHIKI KAISHA  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
9 March 2015 concerning maintenance of the  
European Patent No. 1970264 in amended form.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** H. Geuss  
O. Loizou

## Summary of Facts and Submissions

- I. The appeal is directed against the interlocutory decision of the opposition division of the European Patent Office posted on 9 March 2015 concerning maintenance of the European Patent No. 1970264 in amended form.
- II. The opposition division held that the subject-matter of claim 1 according to the main request does not meet the requirements of Articles 123 (2) and (3) EPC.

The opposition division further held that the subject-matter of independent claims 1, 3 and 6 according to auxiliary request 1a involves an inventive step, starting from

JP 2003 041821 A (D1),

taking into consideration the teaching of

Wirtschaftsinformatik I, Hansen, H. R.; Neumann, G.; Stuttgart (2001), p. 1087-1088 (D3)

Computer Networks, Tanenbaum, A. S.; New Jersey (1988), p. 110-111 (D4)

Trans/WP 29/1024 (2004), Draft Supplement 3 (D5)

- III. Both parties appealed against this decision.
- IV. With the statement of grounds of appeal the opponent filed *inter alia* the following documents:

US 2003/0016130 A1 (D6)

Modern Operating Systems, Tanenbaum, A. S.; New Jersey (2001), p. 138-139, 159, 160, 284, 285 (D7)

Computer Networks, Tanenbaum, A. S.; New Jersey (1996), p. 243, 244, 251 (D8)

V. Oral Proceedings were held on 27 March 2018.

The appellant II (patent proprietor) requested that the decision under appeal be set aside and a patent be maintained as granted (main request) or in the alternative, on the basis of the set of claims of one of the auxiliary requests 1 to 3 as filed with its statement of grounds of appeal.

The appellant I (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

VI. Claim 1 as maintained by the opposition division according to the interlocutory decision reads as follows:

A remote control method for remotely controlling operation of equipment furnished in a vehicle in response to a remote control request generated by a remote controller, the method comprising the steps of:

transmitting the remote control request for a vehicle equipment on the vehicle from the remote controller to a control center;

**acquiring, at the control center, vehicle status information about the local operation of said vehicle equipment on the vehicle from the vehicle;**

determining, at the control center, whether to operate said vehicle equipment based on whether said vehicle status information satisfies a prescribed condition;  
and

transmitting a remote control instruction for said vehicle equipment on the vehicle from the control center to the vehicle if the prescribed condition is satisfied.

VII. Claim 1 of the auxiliary request 1 differs from the claim as maintained by the opposition division in the acquiring-feature (cf. highlighted feature above). This feature reads as follows:

...  
acquiring, at the control center, vehicle status information about said vehicle equipment on the vehicle;

...

VIII. The acquiring-feature of claim 1 according to auxiliary request 2 is amended as follows (cf. highlighted feature above in the main request):

...  
acquiring, at the control center, the vehicle status information indicating the current state of that vehicle equipment from the vehicle;

...

IX. The acquiring-feature of claim 1 according to auxiliary request 3 reads as follows (cf. highlighted feature above in the main request):

...

acquiring, at the control center, the vehicle status information about the another remote control request or the local operation of said vehicle equipment from the vehicle;

...

- X. The patent proprietor's (appellant II) submissions as relevant to the present decision may be summarized as follows:

The main request to maintain the patent as granted should be admitted into the proceedings. The patent proprietor is adversely affected since the scope of protection of claim 1 in the amended form as allowed by the opposition division in its interlocutory decision is narrower than the scope of the granted version of claim 1.

The first auxiliary request corresponds to the main request in the proceedings before the opposition division. The decision that claim 1 of this request infringes Articles 123 (2) and (3) EPC is not correct. The term "vehicle status information from the vehicle" in original claim 1 has to be interpreted as meaning that the origin of the vehicle status information is the vehicle (i.e. the specific equipment in the vehicle). It is not specifically defined which entity actually composes the information, as long as it is status information about the specific equipment. Therefore, the subject-matter of claim 1 of the first auxiliary request does not extend the scope of protection. Further, the feature "about said vehicle equipment" is not related or linked to the further features of the respective embodiment. It is clear for the skilled person what is meant by a "status

information about a vehicle equipment", i.e. that this status information is local in the vehicle. Thus the overall disclosure justifies the generalisation of the feature and its introduction into the claim.

With respect to claim 1 of the auxiliary request 2, the supplementary feature "indicating the current state of that vehicle equipment" is disclosed in paragraph [0005] of the published application. This passage explains that the system adjusts or regulates multiple driving requests made to the same vehicle equipment based on the current state of that vehicle equipment.

Claim 1 of the auxiliary request 3 makes clear that the vehicle status information about the other remote control request or the local operation of said vehicle equipment from the vehicle is acquired at the control center. It is apparent for the skilled person from the original disclosure that the status information is the information of a vehicle equipment in the vehicle, i.e. a local information.

None of the documents on file disclose that the control center is the relevant instance for regulating requests coming from different sources with respect to a specific vehicle equipment. All documents discuss how to handle multiple requests and the way of prioritizing. However, the inventive idea, namely to assign the task of managing the requests to a - superordinate - control center is not shown in any of the cited documents.

XI. The opponent's (appellant I) arguments as relevant to the present decision may be summarized as follows:

The main request to maintain the patent as granted



should not be admitted into the proceedings. Claim 1 as granted has been abandoned during the opposition proceedings and therefore the patent proprietor/appellant is not adversely affected as regards the main request.

The subject-matter of claim 1 according to the first auxiliary request contains undisclosed subject-matter. The added feature does not specify that the vehicle status information is the information about the local operation of the respective vehicle equipment. Further, the term "from the vehicle" is missing in claim 1 which means that the vehicle status information can come from elsewhere.

Claim 1 of auxiliary request 2 likewise contains undisclosed subject-matter. The passage indicated as the basis for amendment clearly relates to a multiple request situation. There is no indication in the whole patent specification that this aspect can be generalized.

The situation for claim 1 of the third auxiliary request is the same as for the first auxiliary request. It is again not clear from the wording of claim 1 (first alternative in the OR disjunction) that the status information comes from the vehicle (and not - for example - from the remote control). Thus claim 1 of auxiliary request 3 also includes undisclosed subject-matter.

The subject-matter of claim 1 as maintained in amended form by the opposition division is not based on inventive step. The sole difference between D1 and the subject-matter of claim 1 is that it is the control center which acquires vehicle status information about

the local operation of an equipment on the vehicle from the vehicle. However it is obvious for a person skilled in network technologies or operating systems to handle multiple requests and to consider prioritizing them. Nothing else is claimed by claim 1 as maintained by the opposition division.

### **Reasons for the Decision**

1. The appeals are admissible.
2. The patent proprietor's/appellant's main request (to maintain the patent as granted) as filed with the statement of grounds of appeal is not admitted into the proceedings, Article 12 (4) RPBA.

2.1 During the proceedings before the opposition division, the patent proprietor submitted a "new set of requests on 2.1.2015 comprising a main request and six auxiliary requests"; cf. decision of the opposition division, page 2, I.2.10.

On 30 January 2015 the patent proprietor submitted an amended main request, with a correction of the main request of 2 January 2015; cf. decision of the opposition division, page 2, I.2.11.

The decision of the opposition division is based on this main request and an auxiliary request 1a, filed during the oral proceedings and which forms the basis for the maintenance of the patent in amended form.

Thus, the maintenance of the patent as granted was no longer a request of the patent proprietor in opposition proceedings. Accordingly, the decision under appeal

does not deal with the claims of the patent as granted.

- 2.2 The Board does not follow the argument that the patent proprietor is anyway adversely affected by the decision as the opposition proceedings resulted in the loss of the patent as granted.

Indeed, the patent proprietor could have maintained the request to maintain the patent as granted in the proceedings before the opposition division, thereby obtaining a reasoned decision on the patent as granted which the Board could have reviewed in the appeal proceedings.

In the present case, the patent proprietor submitted a new main request on 30 January 2015 after having had the possibility of carefully considering its case (summons to oral proceedings were sent on 28 July 2014) and thus *de facto* waived the maintenance of patent as granted.

Under these circumstances, the Board considers it as appropriate to exercise its discretion under Article 12(4) RPBA not to admit the patent proprietor's main request to the appeal proceedings.

3. None of the auxiliary requests 1 to 3 is allowable, since the respective claim 1 either includes subject-matter extending beyond the content of the application as originally filed or has a broader scope as compared to granted claim 1, or both, Article 123 (2) and (3) EPC.
- 3.1 The auxiliary request 1 corresponds to the main request according to the decision of the opposition division. The opposition division held that claim 1 encompasses

subject-matter extending beyond the content of the application as filed, Article 123(2) EPC and that the amendments extended the scope of protection, Article 123(3) EPC.

The Board, considering that the arguments put forward in appeal proceedings correspond to those put forward in first instance proceedings, agrees with the reasoning of the opposition division in this respect (see point II.0 of the impugned decision) and adopts it as its own.

3.2 The "acquiring-feature" in claim 1 of auxiliary request 2 reads as follows:

"acquiring, at the control center, the vehicle status information indicating the current state of that vehicle equipment from the vehicle",

whereby the term "indicating the current state of that vehicle equipment" has been added.

The patent proprietor/appellant cited the last sentence of paragraph [0005] of the A2 publication as the relevant basis of disclosure.

In the Board's view, this passage addresses "adjusting or regulating multiple driving requests made to same vehicle equipment based on the current state of that vehicle equipment" and is therefore directed to the special situation of multiple driving requests made to a same vehicle equipment and thus does not form a suitable basis for the general definition of claim 1 which is unrelated to multiple driving requests.

Consequently, claim 1 of auxiliary request 2 contains

undisclosed subject-matter (Article 123(2) EPC).

- 3.3 The "acquiring-feature" in claim 1 of auxiliary request 3 reads as follows:

"acquiring at the control center, the vehicle status information about the other remote control request or the local operation of said vehicle equipment from the vehicle".

This feature now contains two alternatives, linked by a disjunction (OR).

Here the Board follows the opponent/appellant's argument that, in the first alternative of this feature, the "vehicle status information about the other remote control request" may be gathered by the control center without it coming from the vehicle. The information may e.g. also be taken from the remote control.

Thus the first alternative of this feature of claim 1 includes the possibility that no information is retrieved from the vehicle, whilst claim 1 as granted explicitly requires acquiring vehicle status information from the vehicle.

For this reason, claim 1 according to auxiliary request 3 contravenes Article 123 (3) EPC - for the same reasons as the opposition division gave in respect of the main request (which corresponds to the present auxiliary request 1, see above, point 3.1 and decision of the opposition division, page 6, first paragraph).

4. As regards the patent in the form as allowed by the opposition division, the opponent/appellant could not convince the Board that the findings in the impugned

decision (see points II.1.1b and II.1.2b) in respect of patentability are not correct. Indeed document D1 in combination with the general knowledge of a skilled person or any of the further cited documents does not challenge inventive step of claim 1 - and claims 3 and 6 respectively.

- 4.1 The opponent/appellant submits that the sole difference between D1 and the subject-matter of claim 1 is that the control center acquires the vehicle status information about the local operation of said vehicle equipment on the vehicle from the vehicle. However this feature is obvious for skilled person since it is known in the art, e.g. network technology, to prioritize requests, cf. D3 or D4. D6 discloses the solution of a multiple request problem in the automotive field.

However, the feature in suit not only claims that a request is handled according to a local situation but that the control center, which is quasi a third instance, is responsible for regulating the remote control request and transmitting instructions (from the control center) to the vehicle.

The opponent/appellant admits that none of the documents on file discloses that the control center is in charge for managing requests coming from different sources.

Therefore, the Board sees no reason to deviate from the reasoning of the opposition division, cf. decision, pages 6 et seq.

- 4.2 Even the teachings of documents D6 to D8, filed with the statement of grounds of appeal, do not alter this situation since none of these documents disclose the

missing feature as discussed above (point 4.1), namely that the control center acquires vehicle status information about the local operation of the vehicle equipment from the vehicle and transmits an instruction to the vehicle.

- 4.3 The same situation is given for claims 3 and 6, directed to a control server and a remote control system.

## Order

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

Both appeals are dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated