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**Datasheet for the decision  
of 21 August 2019**

**Case Number:** T 2077/15 - 3.4.02

**Application Number:** 04010565.2

**Publication Number:** 1593938

**IPC:** G01C21/36, G08G1/0969

**Language of the proceedings:** EN

**Title of invention:**

Method for indicating a route to a destination and navigation system therefor

**Applicant:**

Harman Becker Automotive Systems GmbH

**Headword:**

**Relevant legal provisions:**

EPC 1973 Art. 56  
RPBA Art. 12(4)

**Keyword:**

Inventive step - main request (no)  
Late-filed auxiliary requests - requests could have been filed in first instance proceedings (yes) - admitted (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 2077/15 - 3.4.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.02**  
**of 21 August 2019**

**Appellant:** Harman Becker Automotive Systems GmbH  
(Applicant) Becker-Görling-Straße 16  
76307 Karlsbad (DE)

**Representative:** Bertsch, Florian Oliver  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 12 June 2015  
refusing European patent application No.  
04010565.2 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** R. Bekkering  
**Members:** H. von Gronau  
B. Müller

## Summary of Facts and Submissions

I. The applicant's appeal is directed against the decision of the examining division to refuse the European patent application No. 04 010 565.2. The examining division refused the application on the ground that the subject-matter of the independent claim 1 of the sole request was an obvious alternative for the person skilled in the art to the solution proposed in document

D4: EP 0 772 174 A.

as closest prior art document.

The examining division also cited documents

D1: EP 1 304 548 A

D2: EP 1 077 362 A

D3: US 2001/0025222 A1.

II. With the statement setting out the grounds of appeal, the appellant requested that the decision of the examining division be set aside and a patent be granted

- as a main request, based on claims 1-10 labelled "Main Request" as filed with the grounds of appeal, original drawing sheets 1/3 - 3/3, original description pages 1-18, and description page 1a as filed on 6 August 2014 to be inserted in-between original description pages 1 and 2;

- as a first auxiliary request, based on claims 1-9 labelled "Auxiliary Request 1" as filed with the grounds of appeal, original drawing sheets 1/3 - 3/3, original description pages 1-18, and description page

1a as filed on 6 August 2014 to be inserted in-between original description pages 1 and 2;

- as a second auxiliary request, based on claims 1-9 labelled "Auxiliary Request 2" as filed with the grounds of appeal, original drawing sheets 1/3 - 3/3, original description pages 1-18, and description page 1a as filed on 6 August 2014 to be inserted in-between original description pages 1 and 2.

As a precaution the appellant requested that oral proceedings be appointed should the board not be able to grant a patent based on the main request or the first auxiliary request.

III. In a communication pursuant to Article 15(1) RPBA annexed to summons to oral proceedings the board expressed its provisional opinion that the subject-matter of claim 1 according to the main request did not involve an inventive step in view of document D4 as closest prior-art document in combination with the teaching of document D3.

With respect to auxiliary requests 1 and 2 the board was of the provisional opinion that the claims of these request comprising features from the description could and should have been filed in the first instance proceedings and that therefore the board had discretion not to admit the auxiliary requests. The board was of the provisional opinion that in exercising its discretion under Article 12(4) RPBA the auxiliary requests should not be admitted into the appeal proceedings.

IV. With a letter dated 3 July 2019 the appellant informed the board that the appellant did not intend to participate at the oral proceedings scheduled for

21 August 2019. The appellant did not put forward any arguments in reply to the communication of the board.

V. Oral proceedings took place on 21 August 2019 in the absence of the duly summoned appellant. At the end of the oral proceedings the chairman announced its decision.

VI. Claim 1 of the main request as filed with the grounds of appeal reads as follows:

"Navigation system in a vehicle comprising:

- means (11) for detecting the current position of the vehicle,
- means (12) for calculating a route to a predetermined destination,
- means (15) for detecting whether the vehicle has reached the final parking position at the destination,
- means (16) for determining a route from the final parking position to the predetermined destination, wherein said means (16) for determining the route from the final parking position to the predetermined destination determines a pedestrian route also considering roads which are closed or restricted for the used vehicle type,
- means (12, 14) for outputting indications concerning the route from the final parking position to the predetermined destination,
- means (18) for enabling or disabling said means for outputting indications concerning the route from the final parking position to the predetermined destination,

wherein said means (18) for enabling or disabling said means for outputting indications concerning the route

from the final parking position to the predetermined destination enables or disables the outputting of indications depending on the route from the final parking position to the predetermined destination, characterized in that said means (18) for enabling or disabling said means for outputting indications concerning the pedestrian route from the final parking position to the predetermined destination selectively enables the outputting of indications depending on a walking distance along the pedestrian route being larger than a predefined threshold."

Claim 1 of the auxiliary request 1 as filed with the grounds of appeal differs from claim 1 of the main request in that the text after the paragraph with the sixth dash has the following wording:

"characterized in that said means for enabling said means for outputting indications concerning the route from the final parking position to the predetermined destination selectively enables the outputting of indications if the final parking position is a car park or a parking garage comprising different exits."

Claim 1 of the auxiliary request 2 as filed with the grounds of appeal differs from claim 1 of the main request in that the text after the sixth dash has the following wording:

"means (18) for enabling or disabling said means for outputting indications concerning the route from the final parking position to the predetermined destination, said means (18) for enabling or disabling said means for outputting indications concerning the route from the final parking position to the predetermined destination

enabling or disabling the outputting of indications in dependence of the route from the final parking position to the predetermined destination,  
- means for determining a complexity for each section of the route and a total complexity over the entire route,  
characterized in that said means for outputting indications concerning the route from the final parking position to the predetermined destination selectively enables the outputting of indications depending on the total complexity of the route."

### **Reasons for the Decision**

1. As announced in its response to the summons of the Board dated 3 July 2019, the appellant did not attend the oral proceedings before the board.  
In accordance with Rule 115(2) EPC and Article 15(3) RPBA, 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.  
In the present case, the duly summoned appellant therefore has to be treated as relying only on its written case.
2. Main request - claim 1 - inventive step (Article 56 EPC 1973)
  - 2.1 The examining division considered document D4 to be the closest prior-art document (see point 2.1 of the reasons of the contested decision) and it was of the opinion that the claimed subject-matter differed from this prior art in that it used the walking distance



along a pedestrian route as a criterion for enabling or disabling the output.

Document D4 disclosed not to output a route to the destination from the parking lot when the parking lot was in close proximity of the destination. The examining division regarded it obvious to consider the walking distance along the pedestrian route when outputting indications concerning the pedestrian route instead of the general proximity (see point 2.2 of the grounds of decision). Documents D1 and D3 were also relevant in this respect (see point 2.3 of the reasons of the decision).

2.2 The appellant argued that document D4 could be regarded as the closest prior art document but that it did not disclose using the walking distance along the last-mile pedestrian route as the decision criterion to selectively trigger the route guidance. According to document D4 the last-mile pedestrian route was only calculated after the decision on whether to output or not the last-mile pedestrian route had been made. The technical effect achieved by the distinguishing technical feature was therefore a more accurate decision criterion for selectively enabling output of last-mile guidance.

As a consequence, the objective technical problem was how to provide a more accurate decision criterion for selectively triggering output of the last-mile route guidance.

Neither D4 alone nor any of documents D1 to D3 suggested the claimed solution (see section VI, point 2 of the grounds of appeal).

The appellant argued that in document D4 the walking distance was not available when the decision to output a route from the parking lot to the destination was made. Furthermore, in document D3 a walking threshold

parameter defined a maximum distance that the end user was willing to walk to the destination. Therefore, even a combination of documents D4 and D3 did not disclose all claimed features. The person skilled in the art would not have combined the documents D4 and D3 in view of the above problem, because the walking threshold according to document D3 did not provide a more accurate decision criterion for selectively triggering the last-mile route guidance.

- 2.3 The board agrees with the opinion of the examining division that document D4 can be regarded as the closest prior art document and that document D4 discloses means for enabling or disabling the means for outputting indications concerning the pedestrian route from the final parking position to the predetermined destination, thereby selectively enabling the outputting of indications depending on a walking distance from the final parking position to the predetermined destination being within upper and lower limits (see D4, column 21, lines 12 to 30).
- 2.4 The subject-matter of claim 1 therefore differs from the disclosure of document D4 in that the output of those indications on the pedestrian route depends on the walking distance along a pedestrian route that also considers roads which are closed or restricted for the used vehicle type. Document D4 does not disclose that these closed or restricted roads should be considered for the purpose of assessing the walking distance from the car park to the predetermined destination.
- 2.5 The board agrees with the appellant's opinion that the technical effect achieved by the distinguishing technical feature is a more accurate decision criterion

for selectively enabling the outputting of the indications concerning the pedestrian route.

The objective technical problem therefore is how to provide a more accurate decision criterion for selectively outputting the pedestrian route indications.

- 2.6 The person skilled in the art looking for a solution to the above problem in view of document D4 would seek advice in documents that indicate a pedestrian route from the parking position to the predetermined destination.

Document D3, for example, discloses embodiments that provide the user with information about reaching destinations by walking in combination with driving (see paragraph 0044). A walking threshold parameter is set that defines a maximum distance a user is willing to walk (see paragraphs 0050 and 0051). The walking route generation function provides walking routes considering the different constraints that apply to driving and walking (see paragraph 0093). This function allows the user to evaluate the option of parking the car and walk the remaining distance (see paragraph 0055) up to the limit of the walking threshold (see paragraphs 0056 and 0074).

The person skilled in the art learns from document D3 that the walking distance on a pedestrian route, which is compared with a walking threshold, also considers routes that are restricted for vehicles.

For a person skilled in the art it is evident in view of the above mentioned problem that this teaching can likewise be applied to the system of document D4. The person skilled in the art would therefore use means for determining the walking distance on a pedestrian route

which also considers routes that are restricted for vehicles in order to assess whether this distance lies within the defined thresholds. It would be evident to compare this calculated distance with the upper and lower thresholds defined in document D4.

2.7 The board considers the appellant's arguments not convincing. Document D4 discloses to compare a walking distance with upper and lower thresholds before the navigation system starts re-searching and outputting the found route (see column 21, lines 21 to 29). With the objective technical problem to provide a more accurate decision criterion for selectively outputting the pedestrian route indications the person skilled in the art would consider document D3, because it teaches to also consider routes that are restricted for vehicles for the walking distance on a pedestrian route. Thus the distance calculated according to these considerations reflects more precisely the effective walking distance that is then compared with a walking threshold. The combination of documents D4 and D3 results in the subject-matter of claim 1, because document D4 already discloses means for selectively enabling or disabling means for outputting indications concerning the pedestrian route depending on a walking distance being within upper and lower limits. Document D3 discloses determining the distance more precisely by also considering routes that are restricted for vehicles. The person skilled in the art would therefore use the distance determined according to these criteria in the system of document D4 and arrive at the claimed subject-matter.

2.8 The subject-matter of claim 1 therefore does not involve an inventive step in view of document D4 in combination with document D3.

3. Auxiliary requests 1 and 2 - admission (Article 12(4) RPBA)
- 3.1 With the grounds of appeal the appellant filed claims according to auxiliary requests 1 and 2.  
Independent claim 1 of the auxiliary request 1 comprises the feature to output indications "if the final parking position is a car park or a parking garage comprising different exits". The appellant argued that this feature had been taken from the original description, page 14, line 3.  
Independent claim 1 of auxiliary request 2 comprises the additional feature to output indications "depending on the total complexity of the route". The appellant argued that this feature had been taken from original claim 11 and the original description, page 8, second paragraph, page 6, first and second paragraphs, page 12, first paragraph.
- 3.2 Article 12(4) RPBA empowers the boards of appeal to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first-instance proceedings. Thus, the boards of appeal have discretion not to admit sets of claims according to requests which could and should have been submitted during the first-instance proceedings but were not (see Case Law of the Boards of Appeal of the EPO, 8th edition 2016, IV.E.4.3.3 b).
- 3.3 The appellant has consciously waived the right to an assessment and decision by the examining division by not filing such auxiliary requests in response to the communication annexed to the summons to oral proceedings before the examining division or at the first-instance oral proceedings by withdrawing its

request for oral proceedings and announcing its intention not to attend any oral proceedings before the examining division. The appellant has not given any reasons why it might have been unable to file the auxiliary requests in the first-instance proceedings. In the present case the board therefore has discretion under Article 12(4) RPBA to not admit the auxiliary requests.

- 3.4 In exercising its discretion the board considers in particular the following aspects: The independent claims 1 of both auxiliary requests were not filed during the first-instance proceedings so that the examining division could not decide on their subject-matter and they concern technical problems which are different from that of the present main (and former sole) request. Furthermore, the claimed subject-matter of the auxiliary requests includes not only additional features with respect to the subject-matter of claim 1 of the main request but replaces features by other features. There is therefore no convergent development from the main request to the claimed subject-matter of the auxiliary requests. In addition, the board cannot prima facie see that these claims and their subject-matter are clearly allowable. The additional features of claim 1 of auxiliary request 1 were not considered during the search for prior art. A decision thus cannot be reached in the appeal proceedings without such search. The expression "complexity" in claim 1 of auxiliary request 2 is not clear (Article 84 EPC 1973), because it cannot be seen from the claim in which respect each section or the whole route might be complex. The complexity could also consist in the walking distance as in claim 1 of the main request.

- 3.5 In view of the above considerations the board, in exercising its discretion under Article 12(4) RPBA, does not admit the auxiliary requests into the appeal proceedings.
4. Since the sole request that is part of the appeal proceedings is not allowable, i.e. the main request, the appeal has to be dismissed.

## Order

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

The appeal is dismissed.

The Registrar:

The Chairman:



M. Kiehl

R. Bekkering

Decision electronically authenticated