

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [X] To Chairmen
- (D) [-] No distribution

**Datasheet for the decision
of 12 January 2021**

Case Number: T 2486/16 - 3.4.03

Application Number: 08748262.6

Publication Number: 2143079

IPC: G07C5/00, G06F21/24, G06Q40/00,
G06Q50/00

Language of the proceedings: EN

Title of invention:

RECORDING AND REPORTING OF DRIVING CHARACTERISTICS WITH
PRIVACY PROTECTION

Applicant:

Appy Risk Technologies Limited

Headword:

Relevant legal provisions:

EPC Art. 52(1), 54, 56, 122
EPC R. 136
RPBA 2020 Art. 12(3), 13(1), 13(2), 15(1)

Keyword:

Novelty - main request (yes)

Inventive step - main request (no) - mixture of technical and non-technical features

Late-filed auxiliary requests - admitted (no)

Decisions cited:

T 0495/91, T 0469/93, T 0641/00, T 2429/17

Catchword:

1. In applying Article 13(2) RPBA 2020 the Board may also rely on the criteria set out in Article 13(1) RPBA 2020 The criteria of Article 13(1) RPBA 2020 may therefore supplement, but do not supplant, the separate requirements of Article 13(2) RPBA 2020 (Reasons, point 6.4.1).

2. When filing requests within the period mentioned in Article 13(2) RPBA 2020, the party, in providing its "cogent reasons", should not only identify the circumstances invoked and explain why they are to be regarded as "exceptional", it should also explain why these circumstances had the direct result of preventing the party from filing its requests at an earlier stage. (Reasons, point 6.5.6).

3. The mere fact that, in a communication under Article 15(1) RPBA 2020, the Board departs in some respects from the reasoning of the Examining Division on inventive step (while reaching the same conclusion) does not constitute "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020, nor does it open the door to the filing of new requests as a response (Reasons, point 6.6.3).



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2486/16 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 12 January 2021

Appellant: Appy Risk Technologies Limited
(Applicant) Global House, Westmere Drive
Crewe Business Park
Crewe, Cheshire CW1 6ZD (GB)

Representative: McGlashan, Graham Stewart
Marks & Clerk LLP
Aurora
120 Bothwell Street
Glasgow G2 7JS (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 14 June 2016
refusing European patent application No.
08748262.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Eliasson
Members: S. Ward
C. Almborg

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division to refuse European patent application No. 08 748 262 on the grounds that the subject-matter of claim 1 was not new within the meaning of Article 54 EPC and did not involve an inventive step within the meaning of Article 56 EPC. The subject-matter of independent claim 6 was also found not to be new, and dependent claims 5 and 10 were found not to meet the requirements of Article 123(2) EPC.
- II. At the end of the oral proceedings held before the Board the appellant confirmed its request that the decision under appeal be set aside and that a patent be granted based on the main request or on the first or second auxiliary request, all filed with its letter of 15 December 2020.
- III. The following documents are referred to:
- D1: US 2006/0053038 A1
- IV. Claim 1 of the main request reads as follows:
- "A method of recording vehicle (12) usage comprising the steps of:*
- a) sensing data indicative of a vehicle (12) location;*
 - b) comparing the data indicative of the vehicle (12) location to a geographic risk map to determine at least one geographical risk rating;*
 - c) transmitting the at least one geographical risk rating to a server (22) without transmitting the data indicative of the vehicle (12) location; and*

d) determining an insurance cost based upon the geographical risk rating."

Claim 1 of the first auxiliary request reads as follows:

"A method of recording vehicle (12) usage comprising the steps of:

- a) sensing data indicative of a vehicle (12) location over time;*
- b) comparing the data indicative of the vehicle (12) location over time to a plurality of geographical areas defined in a geographic risk map, the risk map assigning one of a plurality of risk ratings to each of the plurality of geographical areas, the risk map being many to one such that different areas have the same risk rating;*
- c) transmitting a risk code to a server (22) without transmitting the data indicative of the vehicle (12) location, wherein the transmitted risk code indicates time spent in geographical areas associated with certain risk ratings defined in the risk map; and*
- d) determining an insurance cost based upon the geographical risk rating."*

Claim 1 of the second auxiliary request reads as follows:

"1. A method of recording vehicle (12) usage comprising the steps of:

- a) sensing data indicative of a vehicle (12) location;*
- b) comparing the data indicative of the vehicle (12) location to a geographic risk map to determine at least one geographical risk rating;*
- c) transmitting the at least one geographical risk rating to a server (22) without transmitting the data*

indicative of the vehicle (12) location, the transmitting occurring in response to a triggering event; and

d) determining an insurance cost based upon the geographical risk rating."

V. Following the summons to oral proceedings, the Board sent the appellant a communication under Article 15(1) RPBA stating that the question of novelty was for discussion at oral proceedings, and giving the Board's preliminary opinion that the subject-matter of claim 1 did not appear to involve an inventive step. In addition, claims 5 and 10 did not appear to meet the requirements of Article 123(2) EPC.

VI. The appellant's arguments, insofar as they are relevant to the present decision, may be summarised as follows:

(i) D1 failed to disclose features b) and c) of claim 1 of the main request, and hence the claimed subject-matter was novel over D1.

Even if D1 were considered to disclose a step similar to feature b), this disclosure had to be read in combination with paragraph [0027], according to which the driver score was also based on the times of day during which the vehicle was driven, and the manner (in relation to the speed limit) in which the vehicle was driven. According to the invention, the key information transmitted to the server was the geographical risk rating; any other data used to determine the insurance cost (driver age etc.) was held on the server side.

Feature c) was also not to be found in D1, which failed to disclose transmitting a geographical risk rating to

a server without transmitting the data indicative of the vehicle location.

(ii) The method of claim 1 was also inventive. The problem was how to operate a remote usage recording system in a manner that secured the location information against third parties. A secondary problem was to reduce the technical requirements of transmission. These were purely technical problems, and claim 1 of the main request provided a technical solution. Contrary to the preliminary opinion of the Board, feature c) did not comprise technical and non-technical aspects. D1 contained no hint to solve these technical problems in the claimed manner. The "many to one" aspect described in paragraph [0040] highlighted that the aim was to provide data security. Although "privacy" was explicitly mentioned in the application, data privacy and data security were two sides of the same coin.

Moreover, the transmission of only the risk rating to a server rather than the full location data required the prior comparing step to occur at the vehicle, which necessitated further computing resources. While processing of this nature might be commonplace for vehicles in 2020, this was not the case at the priority date of the application. Simply transmitting all of the data was the solution at the time.

(iii) The first and second auxiliary requests filed with the letter dated 15 December 2020 should be admitted into the procedure. These requests were "straightforwardly allowable", in that they defined subject-matter which had a clear basis in the application as originally filed, and which was novel and inventive.

There were also "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020 which explained why these requests were not filed at an earlier stage. Although there was little case law on the meaning of "exceptional circumstances" in Article 13(2) RPBA 2020, the same term was used in the case law relating to the re-establishment of rights, and changes of ownership were seen as "exceptional circumstances", as set out in *Case Law of the Boards of Appeal of the European Patent Office*, 9th Edition, July 2019, III.E.5.3. In the present case the original applicant had gone into receivership, and there had been a transfer of ownership, necessitating an interruption and resumption of proceedings; this corresponded to "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020.

Moreover, the arguments used by the Board in its communication pursuant to Article 15(1) RPBA 2020 were not exactly the same as those of the Examining Division in the contested decision, and this was a further reason for admitting the auxiliary requests.

Reasons for the Decision

1. The appeal is admissible.
2. *Main Request: The issues under discussion*

At the start of the oral proceedings the Chair indicated that the most important issue in relation to the main request appeared to be whether the subject-

matter of claim 1 involved an inventive step starting from D1. If necessary (i.e. if it became doubtful that any differences over D1 could be identified), the discussion could be refocused on novelty.

3. *Main Request: Feature b)*

3.1 The appellant argued that D1 did not disclose feature b) of claim 1 of the main request, which reads as follows:

"b) comparing the data indicative of the vehicle (12) location to a geographic risk map to determine at least one geographical risk rating".

D1 discloses (Fig. 2 and paragraphs [0035], [0036]) a map of a geographic region divided into sub-areas (A to E), each having a risk factor identifying an associated driving risk (paragraph [0037], TABLE 3).

3.2 According to paragraph [0037] of D1:

"the risk factor values are multiplied by the percentage of time that the vehicle/driver is within that region or sub-area and then the products are summed to obtain the weighted score."

The Board found in its communication (point 1.3) that the result of such a procedure constituted a "geographical risk rating" within the meaning of claim 1, and this finding has not been challenged by the appellant. Accordingly, all the elements of feature b) are disclosed in D1.

3.3 The appellant argued at oral proceedings that the above passages in D1 had to be read in the light of paragraph

[0027], from which it could be derived that the driver score was based not only on geographical location, but also on the time of day when the vehicle was driven (paragraphs [0028] - [0034]) and how the vehicle was driven in relation to the speed limit (paragraphs [0040] - [0042]). In contrast, according to claim 1 of the main request, the determination of the insurance cost was only defined to be based on the geographical risk rating (although it might depend on other information held on the server side, such as driver age etc.).

3.4 This argument appears to relate more to feature d) than feature b), but even if the claimed features are considered in combination, it does not persuade the Board.

3.5 The Board considers that D1 does in fact disclose embodiments in which the driver score may be based only on geographical considerations, for example in the combination of claim 1 and claim 10.

However, even if this were not the case (as argued by the appellant), the more general point is that claim 1 does not define that the determination of the insurance cost is based *only* on the geographical risk rating; it is not excluded that other information (including data collected by other sensors on the vehicle, such as the time of day or the speed) may also be part of the determination.

3.6 Such an interpretation of claim 1 is, moreover, entirely consistent with the description. The Board accepts that paragraph [0041] describes an embodiment in which the risk code "could be based solely on time spent in each geographical area and the associated risk

ratings for those geographical areas", i.e. it could be based solely on the "geographical risk rating".

However, the first sentence of paragraph [0042] states that, in another example:

"additional information, such as speed (or speed as compared to current speed limit), time of day, day of the week, hard acceleration information, etc. could all be input into the risk-coding algorithm 70."

3.7 In the light of the above, the Board judges that feature b) is disclosed in D1; the same applies to feature d) and the combination of features b) and d)).

4. *Main Request: Feature c)*

4.1 The appellant also argued that D1 did not disclose feature c) of claim 1 of the main request, which reads as follows:

"c) transmitting the at least one geographical risk rating to a server (22) without transmitting the data indicative of the vehicle (12) location; and".

4.2 D1 discloses (paragraph [0020], Fig. 1) a vehicle, in which is installed a vehicle monitor (also referred to as a "data collection and recording system" or "vehicle based component") comprising data collection interfaces (120, 130) which collect usage data, a data recording system (140) and a transmitter (150). The signal transmitted by the transmitter is received by a receiver (160) and provided to a central system (170) for processing, possibly in conjunction with back end processing (180) (see paragraph [0021], Fig. 1). A driver score is calculated based, at least in part, on

the usage data, and is used in determining or adjusting the insurance premium (paragraphs [0012], [0013] and [0048]).

In the embodiment described in detail "by way of example" (paragraph [0048]), the usage data is transmitted to the central system, and the central system calculates the driver score (paragraphs [0023], [0048] and claim 11).

4.3 However, paragraph [0015] commences as follows:

"The determination of the driver score can be accomplished by the vehicle monitor, by a central system or by a combination of both."

Thus, three alternatives are disclosed, according to one of which the driver score may be entirely determined on-board the vehicle by the vehicle monitor. Since the determination or adjustment of the insurance cost is made by the central system, with possible input from back end processing, actuarial scientists etc. (see paragraph [0020], claims 18, 23), it is implicit that where the driver score is determined by the vehicle monitor, it would subsequently have to be transmitted to the central system, which may be accurately described as a central server.

4.4 As noted above in paragraph 3.2, D1 also discloses the determination of a driver score which is at least partly based on (in the terminology of the present application) a "geographical risk rating".

However, D1 also describes the collection of usage data based on the time of day when the vehicle is driven and the speed at which it is driven relative to the speed

limit (see point 3.3, above), or on other data types (for example, chosen from the list given in paragraph [0020]) or combinations of data types (paragraphs [0014], [0051]).

4.5 In summary, D1 discloses:

- embodiments in which the driver score is transmitted to the central system, and
- embodiments in which the driver score corresponds to or includes a geographical risk rating.

There is, however, no clear and unambiguous disclosure of the combination of these two aspects, i.e. transmitting a geographical risk rating to a server. The first part of feature c) is therefore not disclosed in D1.

4.6 The second aspect of feature c) ("without transmitting the data indicative of the vehicle (12) location") defines a requirement or constraint to be met when carrying out the primary action defined by this feature ("transmitting the at least one geographical risk rating to a server"). Since D1 does not disclose transmitting a geographical risk rating to a server, it follows that it does not disclose what should or should not be transmitted to a server alongside a geographical risk rating. This aspect is therefore also not disclosed in D1.

4.7 The Board therefore judges that the subject-matter of claim 1 of the main request differs from D1 in feature c). The claimed subject-matter is therefore new within the meaning of Articles 52(1) and 54 EPC.

5. *Problem and Solution*

- 5.1 According to the detailed embodiments of D1, the driver score is determined *at the central system* based on the usage data collected and transmitted by the vehicle monitor (paragraph [0048]). This method (which appears to correspond essentially to the prior art as acknowledged in paragraph [0002] of the present application) is considered to represent the closest prior art. As also noted above, claim 1 of the main request differs from this method in the provision of feature c).
- 5.2 According to the application, the aim of the invention is to improve the privacy of the user (paragraphs [0003] and [0004], and see also paragraph [0041], penultimate sentence, and paragraph [0042], final sentence).
- 5.3 In the Board's view, feature c) comprises both technical and non-technical aspects, and while the Board acknowledges that improved user privacy is the overall aim of the invention, in order to arrive at a precise statement of the technical problem solved by feature c) it is necessary to disentangle the technical and non-technical aspects.
- 5.4 The present application addresses concerns about "the amount of detailed information that is given to insurance companies" (paragraph [0003]). An obvious and *non-technical* remedy to these concerns, i.e. that would have occurred to a business person without requiring an engineer or programmer, would be to ensure that the insurance company never had access to this "detailed information" in the first place. In the case of clearly sensitive data such as vehicle location (which would allow the insurance company to track the movements of the driver), this non-technical solution would require

that the data indicative of the vehicle location was not transmitted to the insurance company, i.e. the second part of feature c).

The *technical* problem solved by feature c) would be how to *implement* this solution, i.e. how to arrive at a workable method whereby an insurance cost is determined based on geographical location (as in D1), but in which the vehicle location data is not transmitted to the insurance company. In this formulation the non-technical aspect of the distinguishing feature c) appears as part of the framework of the technical problem to be solved, in accordance with T 641/00 (COMVIK, see points 1 and 2 of the Headnote).

The technical solution to this problem, according to the invention, is to transmit to the insurance company server a geographical risk rating, so that the insurance cost may be determined on the server, without requiring transmission of the actual location data.

- 5.5 The skilled person facing the task of providing a method whereby an insurance cost may be determined based on geographical location, but without transmitting vehicle location data to the insurance company, would readily have found a solution starting from D1:

As mentioned above, D1 discloses a driver score which may constitute or include a geographic risk rating within the meaning of claim 1, and paragraph [0015] discloses that the determination of the driver score can be carried out on the vehicle by the vehicle monitor (point 4.3, above); in such a case it is implicit that the determined driver score would be transmitted to the central system/server for the

determination of the insurance cost, with no requirement or incentive to include in the transmitted signal the raw location data, which, once the driver score has been determined, is redundant. The skilled person would thereby have been led in an obvious manner to the subject-matter of feature c).

5.6 The appellant argued that the invention aimed not only at privacy in relation to insurance companies but also at data security in relation to third parties. The problem was, in particular, how to operate a remote usage recording system in a manner that secures the location information against third parties. A secondary problem was to reduce the technical requirements of transmission. These were purely technical problems, and it was inappropriate to regard feature c) as comprising technical and non-technical aspects. D1 provided no hint to solve these technical problems by means of feature c) of claim 1.

5.7 It is the established jurisprudence of the Boards of Appeal that an objective definition of the problem to be solved by the invention should normally start from the problem described in the patent application or the contested patent. Only if examination shows that the problem disclosed was not solved or if inappropriate prior art was used to define the problem, is it necessary to investigate which other problem objectively exists (T 495/91, Reasons for the Decision, point 4.2, which has been cited in many subsequent decisions; see also *Case Law of the Boards of Appeal of the European Patent Office*, 9th Edition, July 2019, I.D 4.3.2).

5.8 As noted above (point 5.2), the aim of the invention according to the application is to improve the privacy

of the user, and the Board is unable to identify in the application any reference to another problem solved by the invention, in particular to the problem of data security, as proposed by the appellant. Improving user privacy and improving data security are two different problems. One relates to reducing the amount of personal data which a user is obliged to disclose (in this case, to an insurance company), and the other to preventing unauthorised or illegal access to data by third parties.

- 5.9 The appellant argued that the reference in paragraph [0040] to the risk rating mapping being "many to one" implied that data security was part of the problem. However, the final two sentences of the following paragraph (paragraph [0041]) read as follows:

"This resultant risk code information could be used by the insurance company to determine insurance rates, while preserving some privacy for the user. Because the risk ratings are many-to-one, it is not possible to determine exactly where the user was during these times."

In other words, the "many to one" feature is explicitly disclosed as providing the user with greater privacy vis-a-vis the insurance company.

The Board therefore judges that the only aim of the invention disclosed in the application concerns the provision of improved data privacy for the user.

- 5.10 Moreover, no reason has been given by the appellant, nor is any reason seen by the Board, why this problem should be reformulated to address a different concern, such as data security. In particular, there is no

reason to believe that D1 represents inappropriate prior art, or that feature c) would fail to provide improved data privacy over the prior art. The only reformulation required is in clarifying the technical and non-technical aspects of the provision of greater privacy (see point 5.4, above).

- 5.11 Finally, the appellant argued that transmission of only the risk rating to a server, rather than the full location data, required prior processing on the vehicle, and the necessary computing resources would not have been available on vehicles at the priority date of the application.

Once again, the Board can find nothing in the application to indicate that the invention is in any way concerned with the issue of processing capacity. In any event, it would have been obvious to the skilled person implementing the solution set out above under point 5.5 to ensure that the vehicle monitor comprised sufficient processing capacity, so that the "determination of the driver score can be accomplished by the vehicle monitor" as disclosed in paragraph [0015].

- 5.12 The Board therefore judges that the subject-matter of claim 1 of the main request does not involve an inventive step within the meaning of Articles 52(1) and 56 EPC.

6. *First and Second Auxiliary Requests: Admission into the Proceedings*

- 6.1 A summons to oral proceedings pursuant to Rule 115(1) EPC was sent in May 2020, and hence it was notified after the date of the entry into force of RPBA 2020

(1 January 2020). By virtue of Article 25(1) and Article 25(3) RPBA 2020 *e contrario*, Article 13(2) RPBA 2020 therefore applies.

The Board's communication pursuant to Article 15(1) RPBA 2020 stated (under point 5) the following: "The appellant is reminded of the provisions of Article 13 RPBA 2020 on amendments ...".

6.2 Article 13(2) RPBA 2020 reads as follows:

"Any amendment to a party's appeal case made after the expiry of a period specified by the Board in a communication under Rule 100, paragraph 2, EPC or, where such a communication is not issued, after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned."

The first and second auxiliary requests were filed with the letter dated 15 December 2020, hence after notification of the summons to oral proceedings, and therefore can, in principle, only be taken into account if there are "exceptional circumstances, which have been justified with cogent reasons by the party concerned".

6.3 The appellant provided a number of arguments to the effect that the first and second auxiliary requests should be admitted pursuant to Article 13(2) RPBA 2020. These arguments, and the Board's responses thereto, are as follows:

6.4 *Prima Facie Allowability*

6.4.1 In applying Article 13(2) RPBA 2020 the Board may also rely on the criteria set out in Article 13(1) RPBA 2020 (see the Administrative Council document CA/3/19, page 12, point 60 and the explanatory notes to Article 13(2), page 43, second paragraph; see also e.g. T 2429/17, Reasons for the Decision, point 2.2). The criteria of Article 13(1) RPBA 2020 may therefore supplement, but do not supplant, the separate requirements of Article 13(2) RPBA 2020.

6.4.2 In the letter dated 15 December 2020 the *only* argument provided by the appellant in support of admitting these requests into the proceedings was that they were "*prima facie* allowable".

The Board accepts that this is one of the criteria mentioned in Article 13(1) RPBA 2020. However, the Board does not feel it necessary to decide on the issue of *prima facie* allowability, since, even if this were accepted, the appellant did not provide cogent reasons why, in the present case, such *prima facie* allowability alone was sufficient to meet the requirement of Article 13(2) RPBA 2020 that there were "exceptional circumstances".

6.5 *Question of "exceptional circumstances"*

6.5.1 In oral proceedings the appellant provided new arguments why the first and second auxiliary requests should be admitted.

The appellant argued that, as there was little case law on the meaning of "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020, this term should be interpreted in the light of the case law

relating to the re-establishment of rights, which also made reference to "exceptional circumstances".

- 6.5.2 The Board firstly notes that the term "exceptional circumstances" does not appear in the legal provisions relating to the re-establishment of rights (Article 122 and Rule 136 EPC), but does appear in the case law relating to this issue. According to *Case Law of the Boards of Appeal of the European Patent Office*, 9th Edition, July 2019, III.E.5.2, third paragraph:

*"For cases where the cause of non-compliance with a time limit involves some error in the carrying out of the party's intention to comply with the time limit, the case law has established the criterion that due care is considered to have been taken if non-compliance with the time limit results either from **exceptional circumstances** [...] or from an **isolated mistake within a normally satisfactory monitoring system** [...]"*
(emphasis in the original).

- 6.5.3 This passage refers to a case where a party intended to comply with a time limit, but failed to do so as a result of an error, and subsequently sought to remedy that error. By contrast, in the present case, the appellant wished to file auxiliary requests after the filing of the statement of grounds of appeal.

The two cases are not comparable. The appellant should have filed any auxiliary requests it wished to rely upon with the statement of grounds of appeal as part of its "complete appeal case" pursuant to Article 12(3) RPBA 2020. The appellant has not asserted that not filing auxiliary requests at this point was the result of an error or did not correspond to its true intention at that time. Filing a single request and relying on

arguments to attempt to persuade the Board to overturn the contested decision appears to have been simply a strategic choice on the part of the appellant. There is therefore no error to be rectified. Already for this reason, the Board is not persuaded that the case law on the re-establishment of rights is relevant for the interpretation of Article 13(2) RPBA 2020 in the present case, as contended by the appellant.

- 6.5.4 The appellant further argued that the exceptional circumstances in the present case were the original applicant going into receivership, the consequent interruption and resumption of proceedings and the transfer of ownership. According to the appellant these facts were somewhat analogous to those mentioned in *Case Law of the Boards of Appeal of the European Patent Office*, 9th Edition, July 2019, III.E.5.3.

It appears to the Board that the the least remote comparison would be with section III.E.5.3.3, dealing with "Complex transfers of company ownership", in which the single case T 469/93 is cited.

In T 469/93, the notice of appeal and the statement of grounds of appeal were not filed within the two-month and four-month time limits under Article 108 EPC. The Board recognised that in the course of complicated company transfers of ownership ("*im Verlauf komplizierter Firmen-Eigentumsübergänge*"), even with all due care required by the circumstances, isolated errors were not entirely avoidable and could be remedied by re-establishment of rights (Reasons for the Decision, point 1, final paragraph).

- 6.5.5 Even if it were accepted that such a disruption to the normal functioning of a business could also represent

"exceptional circumstances" within the meaning of Article 13(2) RPBA 2020, something which the present Board does not have to decide, T 469/93 deals with a case where a failure to carry out a procedural act (filing the notice of appeal and the statement of grounds of appeal within the relevant time limits) could be plausibly explained as being a direct result of the exceptional circumstances invoked (the complex change of ownership happening at the same time). In the view of the Board, a similar causal link would typically need to be established for any application of Article 13(2) RPBA 2020.

- 6.5.6 When filing requests within the period mentioned in Article 13(2) RPBA 2020, the party, in providing its "cogent reasons", should not only identify the circumstances invoked and explain why they are to be regarded as "exceptional", it should also explain why these circumstances had the direct result of preventing the party from filing its requests at an earlier stage.
- 6.5.7 The appellant in the present case should have filed its auxiliary requests with the statement of grounds of appeal dated 24 October 2016 as part of its "complete appeal case" (Article 12(3) RPBA 2020). According to the appellant's letter dated 9 May 2019, and the annexes thereto, the original applicant ("Intelligent Mechatronic Systems Inc.") went into receivership as a result of a court order dated 14 September 2018. Pursuant to Rule 142 EPC, the proceedings before the EPO were interrupted as from 14 September 2018, and resumed as from 1 August 2019 with the new (and present) applicant.

The original applicant therefore went into receivership almost two years after the filing of the statement of

grounds of appeal. Even if difficulties experienced by the original applicant were considered to constitute "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020, the appellant has submitted no evidence that the original applicant was experiencing any such difficulties at the date of filing the statement of grounds of appeal, when any auxiliary requests on which the appellant wished to rely should have been filed.

6.5.8 For these reasons, the arguments of the appellant in this regard do not persuade the Board.

6.6 *Reaction to the Arguments of the Board*

6.6.1 Finally, the appellant argued that the auxiliary requests should be admitted as the arguments used by the Board in its communication pursuant to Article 15(1) RPBA 2020 were not exactly the same as those of the Examining Division in the contested decision.

6.6.2 The application was refused on the grounds that the subject-matter of claim 1 was not new, and that even if novelty were acknowledged it would not involve an inventive step, in both cases over document D1; in addition claims 5 and 10 did not meet the requirements of Article 123(2) EPC.

In its communication under Article 15(1) RPBA 2020 the Board stated that the question of novelty was for discussion, but found provisionally that the subject-matter of claim 1 did not involve an inventive step, in both cases over document D1, and that claims 5 and 10 did not appear to meet the requirements of Article 123(2) EPC. Thus, no new objections were raised by the

Board which might have justified the filing of amended requests.

6.6.3 The mere fact that, in a communication under Article 15(1) RPBA 2020, the Board departs in some respects from the reasoning of the Examining Division on inventive step (while reaching the same conclusion) does not constitute "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020, nor does it open the door to the filing of new requests as a response.

6.7 For the above reasons, the Board exercises its discretion not to admit the first and second auxiliary requests into the proceedings pursuant to Article 13(2) RPBA 2020.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated