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**Datasheet for the decision  
of 11 October 2019**

**Case Number:** T 0924/17 - 3.2.01

**Application Number:** 10177323.2

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B60W30/08, B60W10/18,  
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**Language of the proceedings:** EN

**Title of invention:**  
Method for an automotive hazardous detection and information  
system

**Patent Proprietor:**  
SMR Patents S.à.r.l.

**Opponent:**  
Hella KGaA Hueck & Co.

**Headword:**

**Relevant legal provisions:**

EPC Art. 108, 56

EPC R. 152

RPBA Art. 13

**Keyword:**

Admissibility of appeal (yes)

Inventive step (main request, auxiliary request 2 and 3: no)

Admissibility of late filed request (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0924/17 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 11 October 2019**

**Appellant:** Hella KGaA Hueck & Co.  
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**Representative:** DTS Patent- und Rechtsanwälte  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
13 February 2017 concerning maintenance of the  
European Patent No. 2431225 in amended form.**

**Composition of the Board:**

**Chairman** H. Geuss  
**Members:** C. Narcisi  
A. Jimenez

## **Summary of Facts and Submissions**

- I. European patent No. 2 431 225 was maintained in amended form by the decision of the Opposition Division posted on 13 February 2017. Against this decision a notice of appeal was submitted on 7 April 2017 by the Opponent pursuant to Article 108 EPC and the appeal fee was paid on the same day. The statement of grounds of appeal was filed by the Opponent on 13 June 2017.
  
- II. In a communication dated 3 August 2017 the Board expressed doubts, according to its non-binding preliminary view, as to the validity of the representative's authorisation and the admissibility of the appeal. The Respondent (Patentee) with letter filed on 28 November 2017 agreed with the Board's preliminary view and contested the admissibility of the appeal.
  
- III. Oral proceedings were held on 11 October 2019. The Appellant (Opponent) requested that the impugned decision be set aside and that the patent be revoked. The Respondent (Patentee) requested that the appeal be rejected as inadmissible, or that the appeal be dismissed (i.e. the patent being maintained in amended form according the appealed decision with claim 1 as granted and amended dependent claims) (main request), or that the appealed decision be set aside and the patent be maintained in amended form according to auxiliary request 1 (filed during the oral proceedings), or to auxiliary request 2 or 3 (both filed on 30 April 2018 as auxiliary requests 1 and 2).

In the event that the Board finds the appeal to be admissible, the Respondent requests to refer the case to the Enlarged Board of Appeal pursuant to Article

112(1) and (2) EPC because multiple questions of fundamental importance arise (cf. letter of the respondent of 11 September 2019):

-Do the formal requirements of Rule 152 EPC apply to a retroactive authorization ?

-Is a retroactive approval permissible under the EPC ?  
If so, can a retroactive approval bestow authorization for the filing of an appeal after the time limit for filing an appeal expired ?

-Does the period set by the EPO pursuant to Rule 152 EPC apply to a retroactive authorization ?

-Can a retroactive effect be derived from an otherwise silent authorization if filed within the period set by the EPO pursuant to Rule 152 EPC ?

-Does Rule 50(3) EPC apply to authorizations and thereby establish a statutory retroactive approval if an authorization is filed within the period set by the EPO pursuant to Rule 152 EPC in all cases ?

IV. Granted claim 1 reads as follows:

"Method of an automotive hazard detection and information system for vehicles running on at least one controller, wherein data of at least one optical sensor or a sensor group (15, 11) including an optical sensor are used, and at least one analysis and interpretation unit per sensor or sensor group to determine geometry data and motion data of vehicle equipped with the software and/or of objects that arise hazardous situation and/or information requiring situation in the surroundings of the vehicle is comprised, the analysed data for at least one display unit and/or warning indicator for each sensor or sensor group is provided; wherein the method is done by software modules for

different detection and information functions that use the same optical sensor data parallel for analysing and providing the different functions and that at least two modules are activated at the same time, characterized in that at least a module dirt detection or a module auto calibration is running with another software module in parallel."

Claim of auxiliary request 1 differs from claim 1 as granted in that the wording "a module dirt detection or" is deleted.

Claim 1 of auxiliary request 2 differs from claim 1 as granted in that the wording "with another software module in parallel" is replaced by "with another software module in parallel, and the software starts an indication to the driver in hazardous cases, wherein the indication is an optical or an acoustical or a tactile signal".

Claim 1 of auxiliary request 3 differs from claim 1 as granted in that the wording "with another software module in parallel" is replaced by "with another software module in parallel, wherein the automotive hazard detection and information system includes at least one interface to the vehicle internal bus system".

V. The Appellant's arguments may be summarized as follows:

The appeal is admissible, for the authorisation (power of attorney) dated 23 May 2017 filed on 6 June 2017 was validly filed by the Appellant pursuant to an invitation according to Rule 152(2) EPC by the Board. According to the "Decision of the President of the European Patent Office (EPO) dated 12 July 2007 on the

filing of authorisations" (see Articles 1(1) and (2)) a professional representative (who identifies himself as such) shall be requested to file a signed authorisation only in exceptional circumstances, such as e.g. in the case in point, if a change of representatives (not being members of the same association) occurs, without the previous representative giving notice to the EPO (at least not early enough) that the authorisation has terminated.

The wording of Rule 152(2) EPC makes no prescription as to the actual date of the authorisation, the Rule being clearly intended to allow the professional representatives to provide a posterior authorisation for a previously accomplished procedural act (e.g. filing of a notice of appeal). In particular, it also does not require proving the existence of a previous informal oral or written authorisation, which entitles the representative to act on behalf of a party ("Bevollmächtigung"). Therefore, it is irrelevant that the signature of aforesaid authorisation is dated of 23 May 2017, i.e. after submitting the notice of appeal, since it does not render inadmissible the appeal.

The subject-matter of claim 1 (as granted) lacks novelty over D1 (US-B1-6 226 389), as in particular disputed features 1.6 (i.e. "wherein the method is done by software modules for different detection and information functions that use the same optical sensor data parallel for analysing and providing the different functions and"), 1.7 ("that at least two modules are activated at the same time,") and 1.8 ("at least a module dirt detection or a module auto calibration is running with another software module in parallel") are known from D1.

For similar reasons the subject-matter of claim is not new over D20 ("Echtzeit-Bildverarbeitung für ein

Fahrer-Unterstützungssystem zum Einsatz auf Autobahnen", Volker Graefe, Informationstechnik und technische Informatik 36 (1994), R. Oldenburg Verlag) (not admitted into the opposition proceedings by the appealed decision).

The subject-matter of claim 1 lacks an inventive step over prior art document D6 (DE-A1-10 2007 002 197), in view of further documents D9 (WO-A1-2010/038223) or D5 (EP-A1-2 192 550). In particular, feature 1.8 distinguishing the claimed subject-matter from D6 is derivable from the obvious combination of D6 with D9 or D5. The same holds in view of D3 (DE-A1-102 44 205), considering the obvious combination of D3 with D9 or D5.

Furthermore, the claimed subject-matter lacks an inventive step over the obvious combination of D6 or D3 with anyone of documents D7 (JP-A-2001 211 466), D8 (DE-A1-10 2008 026 876), D10 (US-A1-2002/0072869), D11 (US-A1-2010/0085427), D12 (DE-A1-10 2005 001 429), D13 (DE-A1-10 2004 048 400), D14 (EP-A2-2 199 951) and D15 (WO-A2-2009/030418) (all of these documents being taken into account in the appealed decision), or with anyone of documents D16 (DE-A1-102007049516), D17 (DE-A1-10149115), D18 ("Proceedings Work-in-Progress Session of the 22nd Euromicro Conference on real-Time Systems (ECRTS'10), July 6-19, 2010, Brussels, Belgium), D19 ("AUTomotive Open System ARchitecture-An Industry-Wide Initiative to Manage the Complexity of Emerging Automotive E/E Architectures", 2004, Convergence Transportation Electronics Association) and D21 ("An architecture for sensor fusion in a mobile robot", April 1986, Carnegie Mellon University) (these documents having not been admitted into the opposition proceedings by the appealed decision), or with anyone



of documents D22 to D28 (reference should be made to the appeal file for identification of these documents) submitted with the statement of grounds of appeal.

Auxiliary request 1 should not be admitted into the appeal proceedings as it was late filed (during the oral proceedings before the Board) and since it is not prima facie clearly allowable.

The subject-matter of claim 1 of auxiliary requests 2 and 3 lacks an inventive step over the obvious combination of D6 with D9 or D5.

VI. The Respondent's arguments may be summarized as follows:

The appeal is not admissible since the notice of appeal submitted on 7 April 2017 was filed without a valid authorisation, the authorisation filed on 6 June 2017 bearing a signature dated of 23 May 2017, i.e. after the filing of the notice of appeal.

The requirements of Article 134 EPC in conjunction with Rule 151(1), (2) EPC and with the "Decision of the President of the European Patent Office dated 12 July 2007 on the filing of authorisations" are not fulfilled. Due to the change of representative, which occurred in the present case, the Opponent's new representative had to file a "signed authorisation" (see Article 1(1) and (2)) of the "Decision of the President of the EPO", in the form of an "individual authorisation" or a "reference to a general authorisation already on file". The word "signed" is of particular importance in the present context, for said "signature" has to be understood as implying the requirement of legal certainty, ensuring the validity of the authorization and of the procedural

steps taken at any given time by a professional representative. Hence, it is established jurisprudence of the Boards of Appeal that procedural steps taken by the representative prior to the date indicated in the signed authorisation are deemed not to have been taken (see Rule 152(6), EPC). Decision T 1685/08 (reasons 4) states in particular that "the consequences of failure to file, for the period from 1 October 2010 to 8 April 2016, a signed authorisation ... for the steps taken by the legal practitioner without authorisation are in the present case fatal for the appeal"; similarly, decision T 1685/08 (point VIII) states that "if the authorisation was not in existence at the time the Notice of Appeal was filed, the appeal shall be deemed not to have been filed, cf Rule 152(6) EPC ...". Also, the EPO stipulated the acceptable form for the authorization and evidence that the Opponent had to provide in order to show that the authorisation existed on 7 April 2017 when the notice of appeal was filed (see e.g. decision T267/07 (point 5.1) asserting that "the acceptable form of the authorization is derivable from the Decision of the President ..."). However, the Opponent merely filed an authorization that provided evidence of the representative's entitlement as of 23 May 2017, thus not extending to the time when the appeal was lodged.

Moreover, the authorisation filed on 6 June 2017 does not include a retroactive approval of the procedural steps taken prior to 23 May 2017 and the authorisation likewise cannot include the presumption that all prior procedural steps taken by the representative are retroactively approved.

A referral of the case to the Enlarged Board of Appeal is requested in order to answer the questions of fundamental importance, in the event that the Board

considers that the appeal is admissible (see above point III).

The subject-matter of claim 1 (as granted) is new over D1, as this document does not disclose aforesaid features 1.6 to 1.8, in particular no software modules performing different functions and no parallel processing of these functions being disclosed.

The subject-matter of claim 1 (as granted) is inventive in view of D6 and D9. Said features 1.6 to 1.8 are not disclosed in D6 and would not be obvious in view of D9. In effect, D6 does not disclose that data from the same optical sensor are used in parallel by different software modules to provide different functions. D6 actually teaches away from parallel processing of said data since it indicates that data from one sensor may be employed to limit use of the data of another sensor to a specific defined range or set (see e.g. D6, claim 5, [0035]), this clearly being a sequential processing of the data of said sensors. In addition, parallel processing of sensor data is likewise not derivable from any other part in the disclosure of D6, figure 1 showing for instance only prior art, and figure 2 and the related portions of the description being unspecific and not giving sufficient information in this respect.

The skilled person would moreover lack any incentive to combine D6 with D9, no suggestion or hint being included in D6 to implement a dirt detection module in this known hazard detection and information system. Furthermore, D9 does not disclose or let alone suggest features 1.6 to 1.8, as it does not disclose parallel processing of images. Indeed, D9 merely teaches dirt detection by sequential processing "of at least two image frames of dissimilar images" (D9, page 2, lines

4-14; see also page 4, lines 11-22). Therefore, the combination of D6 and D9 would not lead to the subject-matter of claim 1.

Documents D16 to D21 should not be admitted into the appeal proceedings, given the Opposition Division's decision not to admit these documents being well founded. Similarly, documents D22 to D28 should not be admitted into the appeal proceedings, since they could and should have been submitted earlier, already during opposition proceedings.

Auxiliary request 1 is admissible, as it is clearly new (see discussion of D1) and inventive over the cited prior art. In particular, the question of inventive step in view of D6 and D5 was essentially previously discussed during the oral proceedings and its discussion would not need considerably more time to be completed. Moreover, this request was filed only during oral proceedings, as D9 was not deemed to be relevant.

The subject-matter of claim 1 of auxiliary request 2 is not rendered obvious by D6 and D9, the arguments submitted for claim 1 of the main request evidently applying and the amendments further contributing to inventive step. In particular, the added feature ensures that the hazardous situation is detected following parallel processing of different software modules corresponding to different detection and information functions, account being taken of all these different functions. This is not suggested in D6 or D9 and the considerable number of steps required for the skilled person to arrive at the claimed subject-matter is also an indicator of inventive step.

The subject-matter of claim 1 of auxiliary request 3 is not rendered obvious by D6 and D9, the arguments submitted for claim 1 of the main request evidently applying and the amendments further contributing to inventive step. Specifically, D6 includes no suggestions relating to an interface with the vehicle's internal bus system, and such an interface is also not needed and would be at odds with the embodiment of figure 2 in D6, which already includes a control interface and an interface with the operator (or driver). As before, the number of steps needed for the skilled person to arrive at the claimed subject-matter is an indicator of inventive step.

### **Reasons for the Decision**

1. The appeal is admissible since it complies with the requirements of Article 108 EPC and since a valid authorisation was filed by the representative on 6 June 2017, for the following reasons.

The President of the EPO determines under Rule 152(1) EPC the cases in which an authorisation shall be filed and may determine the form and the content of an authorisation (Rule 152(5)). According to Article 1(1) of the "Decision of the President of the European Patent Office (EPO) dated 12 July 2007 on the filing of authorisations" a professional representative (whose name appears in the list maintained by the European Patent Office) is required to file a signed authorisation only under the circumstances set out in Article 1(2), (3) of said "Decision" of the President.

The circumstances of the case in point are those set out in Article 1(2), wherein a change of professional representatives has occurred, without the EPO being notified that the previous representative's authorisation has terminated. In this case the new representative must file (together with the notification of his appointment) an individual authorisation (or a reference to an authorisation already on file) (Article 1(2) of the "Decision" of the President of the EPO) or, if he does not, as in the present case, he shall be requested to do so within a period to be specified by the EPO (Article 1(2) of the "Decision" of the President of the EPO and Rule 152(2) EPC).

The new representative filed in due time on 6 June 2017 a signed authorisation, following the invitation by the EPO according to Rule 152(2) EPC. The authorisation bears a signature with date of 23 May 2017, i.e. after lodging the notice of appeal.

There is no requirement however, either in said "Decision" of the President of the EPO or in Rule 152(2) EPC, for the signature's date to be prior to the filing date of the notice of appeal, let alone a requirement that any procedural step taken before the signature's date be explicitly approved in the signed authorisation. This would be tantamount to requiring proving the existence of a previous informal oral or written authorisation, which entitles the representative to act on behalf of a party ("Bevollmächtigung") and further, this would also be contrary to the intended purpose of Rule 152(2) EPC, which is clearly to allow to remedy the missing filing of the authorisation, as it appears implicit and evident that the authorisation generally relates to and

encompasses any action by the new representative during specific ongoing proceedings before the EPO, as in the case in point.

Finally, the Board notes that the new representative has offered (not needed further) evidence (and already provided partial evidence in the form of E-mails between the representative and the Appellant) for the existence of a previous informal agreement with the Appellant, empowering the representative to file the notice of appeal.

The decisions cited by the Respondent are not relevant to the present case and do not contradict the above conclusions of the Board.

In particular, in case T 1846/11 a legal practitioner (not a professional representative) was involved, who is required by Article 2 of said "Decision" of the President of the EPO to always file a signed authorisation or a reference to a general authorisation already on file and who did not provide it. A later filed general authorisation was not considered as being valid at the time of filing the notice of appeal, since there was no evidence that at that point in time said legal practitioner was a member of the list of professional representative (Article 134(1)) and belonged to an association of representatives.

In case T 1685/08 an authorisation was exceptionally requested pursuant to Article 1(3) of the "Decision" of the President of the EPO, as there were doubts as to the existence of the Appellant as legal entity and as to the representative's entitlement to act. Such an authorisation was not filed.

In decision T 267/08 an authorisation was filed which did not meet the formal requirements, in particular no

original version of the authorisation had been filed and this deficiency was not remedied.

2. The Board considers that the legal situation concerning the representative's entitlement to act on behalf of the Opponent in this proceedings can clearly be derived from the EPC in conjunction with Article 1(1) and 1(2) of the "Decision of the President of the European Patent Office (EPO) dated 12 July 2007 on the filing of authorisations", as explained above. Therefore no question of law of fundamental importance arises and, in particular, none of the questions as put forward by the Respondent (cf. above point III) constitutes a question of law of fundamental importance.

Therefore, no questions of law of fundamental importance arise in the present case specifically concerning the time limit for filing an appeal (question 2) or in connection with Rule 50 (3) EPC (question 5), which is immaterial to the present decision.

Furthermore, it ensues from the above conclusions (see point 1) that no diverging case law exists concerning the case in point and therefore there is no need for a referral of the present case to the Enlarged Board of Appeal (Article 20(1) RPBA (Rules of Procedure of the Boards of Appeal)).

3. The subject-matter of claim 1 (as granted) is new over D1 since the features 1.6 to 1.8 are not clearly and unambiguously disclosed in D1.
4. The subject-matter of claim 1 (as granted) lacks an inventive step over D6 in view of D9. D6 discloses all the features of claim 1 with the exception of feature



1.8, given features 1.6 and 1.7 being known from D6, contrary to the Respondent's view.

In effect, D6 shows in the embodiment of figure 2 that the data of three sensors (Sensor 1 to Sensor 3, one sensor being e.g. a Lidar-Sensor and another sensor being an optical sensor (video camera)), are fed together and synchronously to the control unit CON (see D6, e.g. [0032], [0033], [0014]), [0011], [0009]), the signal from each sensor being available for all different applications (i.e. information and detection functions) (D6, [0032], [0011]) and the complete information obtained by the control unit through parallel data processing of all sensors (or at least two) (see D6, e.g. claim 2, [0032] (see e.g. "thereby each application is provided with the data of a plurality or of all sensors and not of only one sensor); see also [0034] ("gemeinsame Datenverarbeitungseinrichtung"), [0033]) is communicated to a controller interface ITF(C) and to an operator (driver) interface ITF(D), i.e. to all different applications (software modules constituting said information and detection functions) at the same time (see D6, [0032], [0033], [0019], [0009]). Thus at least two software modules are activated at the same time (i.e. in parallel), as also confirmed by claim 1 of D6 (see e.g. "an output for delivering an output signal to each driver-assistance application (App1, App2, App 3) of a plurality of driver-assistance applications").

Thus, starting from D6 the skilled person would envisage increasing the reliability of said information and detection functions and would realize that D9 obviously provides an improvement over the known system, i.e. particularly by detecting the presence of dirt on the lens of a camera (see D9, abstract).

Further, the method and system of D9 "can be operated at any time when the vehicle is being driven at a relatively low speed ... and thus, can operate in the background without interfering with the processing of image frames captured by the camera for display on a dashboard mounted visual display screen" (D9, page 4, lines 15-20). Therefore, D9 clearly indicates that its method does not interfere with processing of image frames by other software modules (i.e. detection and information functions) and (as contended by the Opponent) the skilled person would in an obvious manner e.g. arrange such a dirt detection module parallel (and in addition) to the other parallel software modules or applications, thus receiving processed data from the controller CON (D6, figure 2) through interface ITF(C), or, if needed, possibly through a further interface. Thereby the feature 1.8 and the subject-matter of claim 1 would be obtained without an inventive step being involved (Article 56 EPC).

The Respondent's arguments could not convince the Board. In particular, claim 1 and the patent specification (EP-B) do not give a precise definition of the term "software module", save for indicating that it is "a small self-contained program that carries out a clearly defined task and is intended to operate within a larger program suite" (see EP-B, [0037]). D6 discloses different applications or information and detection functions (e.g. Adaptive cruise control, Traffic jam assist, Traffic sign recognition, Lane departure warning, Blind Spot detection etc. see [0024], [0032]), all of which are self-evidently implemented by software programs (intended to operate within a larger program) which are separate, distinct and limited to one specific application, thus being also self-contained, thus

clearly fulfilling the aforementioned broad definition of "software module" given in EP-B.

Further, D6 undoubtedly discloses in the embodiment of figure 2 that data from different sensors are processed in parallel, as inferred e.g. from the statement "thereby each application is provided with the data of a plurality or of all sensors and not of only one sensor" (D6, [0032]) and confirmed by the further indication that "the input of data from different sensors to the control unit may occur simultaneously or sequentially" (see [0009]).

Moreover, "parallel" processing as included in features 1.6 to 1.8 of claim 1 is not defined in the claim and a precise definition is likewise missing in EP-B.

Therefore it must generally be merely understood as meaning that different data (e.g. from different sensors) are processed at the same time, which certainly applies to the method of D6, as set out hereinbefore. This however does not exclude that data processing in said control unit may include a feedback ("Rückkopplung") between data from different sensors (see D6, e.g. [0035], claims 2, 3, 5), as no requirement is present in claim 1 for an exclusively independent processing of data from different sensors.

5. The Board decided to exercise its discretionary power not to admit auxiliary request 1 under Article 13(1), (3) RPBA (Rules of Procedure of the Boards of Appeal).

Firstly, new auxiliary request 1 was submitted very late during oral proceedings (at 4:10 pm) and is clearly late filed, given in particular (contrary to the Respondent's view) the question of inventive step involved in feature 1.8 (according to the one alternative indicating a dirt detection module running in parallel with another software module) and based on

the line of argument including D6 and D9 having been thoroughly discussed by the Appellant (see e.g. statement of grounds, page 16; letter filed 18 July 2018, page 12) and by the Respondent (see e.g. letter filed on 30 April 2018) already in the written proceedings. Consequently the Respondent's argument is not plausible that the relevance of D9 became apparent only during oral proceedings. Moreover, the Respondent's evident intent and aim was during the entire appeal (and opposition) proceedings to seek protection for the subject-matter according to both alternatives included in claim 1, as all previously submitted (main and auxiliary) requests include both said alternatives. Therefore, the Respondent obviously knew that all requests on file could in principle fail if only one of said alternatives did. Nonetheless, the Respondent apparently deliberately chose not to file further requests until the very last moment during oral proceedings. It is concluded that new auxiliary request 1 was clearly late filed, therefore the Board under Article 13 (1) RPBA has a discretionary power not to admit this request.

Secondly, the specific circumstances of the present case very clearly lead to the conclusion that none of the criteria mentioned in Article 13(1) RPBA would warrant admission of auxiliary request 1 into the proceedings.

In the first place, new auxiliary request 1 deletes one alternative in feature 1.8 (which alternative is included in the main request and in all auxiliary requests previously on file (see former auxiliary requests 1 and 2)). Thus, new auxiliary request 1 necessarily entails dealing with this second

alternative to an extent and in detail as never discussed before.

In particular, all the objections specifically related to this second alternative would obviously need to be discussed, such as the question of inventive step in view of D6 and each of documents D5, D8, D10 to D15, similarly in view of D3 and each of documents D5, D8, D10 to D15, further the admissibility under Article 12(4) of documents D16 to D21 and (at least) the relevance of D20 to the question of novelty and of D16 to D19, D21 to the question of inventive step, still further the admissibility under Article 12(4) RPBA of documents D22 to D28 and (at least) their relevance to the question of inventive step. Moreover, each one of these objections involves complex issues as illustrated e.g. by the fact that after the discussion of inventive step objections based on D6 and D5 (which was the only line of argument on inventive step, beside that one based on D6 and D9, discussed during oral proceedings) the Board did not arrive at a definite conclusion, implying that even this issue would have needed further debate. Such complex issues would necessarily arise as new aspects for discussion in respect of almost anyone of the documents D16 to D21 and D22 to D28 (and all lines of argument based thereon), given these documents (and respective lines of argument) having been discussed only at margin, in a succinct and cursory manner heretofore during opposition and appeal proceedings (see for instance appealed decision, points 14.3.2 and 14.3.3 in relation to documents D16 to D19 and D21).

It is therefore obvious that the Respondent's argument implying no longer discussions being needed to deal with new auxiliary request 1 are unfounded.

From the above facts it likewise necessarily already ensues that claim 1 of new auxiliary request 1 is not prima facie clearly allowable.

In view of the above reasons the Board considered that at the given state of the proceedings admitting new auxiliary request 1 was also contrary to procedural economy, thus none of the criteria mentioned in Article 13(1) RPBA being compatible with the admission of new auxiliary request 1. Moreover, in all likelihood this would have rendered necessary to adjourn the oral proceedings, due to the number and complexity of the issues to be discussed, this being clearly also at odds with Article 13(3) RPBA.

6. The subject-matter of claim 1 of auxiliary request 2 does not involve an inventive step (Article 56 EPC) in view of D6 and D9 and the skilled person's common general knowledge. Indeed, the added feature cannot contribute to inventive step. In effect, the feature implying that in hazardous cases an indication such as an optical or an acoustical or a tactile signal is given to the driver is explicitly suggested in D6 (D6, [0026]), stating that "by means of a driver (or an operator) interface the driver may be given indications (or hints) or it may be warned". In particular, it would be obvious for the skilled person to give the driver indications in hazardous cases, these indications being e.g. of "acoustic, haptic or visual" type (see D6, [0026]). Moreover, the warning signal may result or be derivable from the indications (information) of only one application (software module), as no further specifications are implied by the claim's wording, contrary to the Respondent's view.

7. The subject-matter of claim 1 of auxiliary request 3 does not involve an inventive step over D6 and D9 and the skilled person's common general knowledge. The added feature cannot contribute to inventive step, as D6 already suggests that by means of "an autonomous vehicle-control interface the vehicle may be acted upon - e.g. through braking or accelerating - without the driver being involved" (D6, [0017]). Therefore, said autonomous vehicle-control interface constitutes an interface between the hazard detection and information system disclosed in D6 (see above point 4) and the vehicle, any interface with the vehicle being obviously implemented by the skilled person e.g. as an interface with the vehicle internal bus system, such a vehicle internal bus system constituting common general knowledge. In particular, the interface ITF (C) as illustrated in the embodiment of figure 2 may also be configured as an interface with the internal bus system. For these reasons the claimed subject-matter lacks an inventive step (Article 56 EPC).

## **Order**

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

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



A. Vottner

H. Geuss

Decision electronically authenticated