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**Datasheet for the decision
of 12 November 2020**

Case Number: T 0505/18 - 3.5.07

Application Number: 09154017.9

Publication Number: 2224355

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:

Wireless communications system providing advertising-based mobile device navigation features and related methods

Applicant:

BlackBerry Limited

Headword:

Advertising-based mobile device navigation features/BLACKBERRY

Relevant legal provisions:

EPC Art. 56, 84, 123(2)

Keyword:

Inventive step - after amendment - claim 1 (yes) - mixture of technical and non-technical features
Claims - clarity - claim 1 (yes)
Amendments - added subject-matter (no) - added subject-matter - claim 1 (no)

Decisions cited:

G 0003/08, T 0641/00, T 1143/06, T 1784/06, T 1235/07,
T 0547/08, T 1741/08, T 2035/11, T 0651/12, T 1188/13,
T 1802/13, T 0336/14, T 0489/14, T 0370/15, T 1442/16,
T 1455/16, T 1091/17,
Bundesgerichtshof: BGH, 26 October 2010, X ZR 47/07, GRUR
2011, 125 - Wiedergabe topographischer Informationen,
Bundesgerichtshof: BGH, 23 April 2013, X ZR 27/12, GRUR 2013,
909 - Fahrzeugnavigationssystem



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Case Number: T 0505/18 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 12 November 2020

Appellant: BlackBerry Limited
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 21 September
2017 refusing European patent application
No. 09154017.9 pursuant to Article 97(2) EPC**

Composition of the Board:

Chair M. Jaedicke
Members: P. San-Bento Furtado
C. Almberg

Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division to refuse European patent application No. 09154017.9. In the decision under appeal, the following documents were cited:
D1: US 2008/0139181 A1, published on 12 June 2008;
D2: EP 1 168 286 A2, published on 2 January 2002.

The examining division decided that the subject-matter of the claims of a main request and of claim 1 of a first auxiliary request lacked inventive step over document D2.

- II. With the statement of grounds of appeal, the appellant submitted claims according to a main request and first to fourth auxiliary requests, where the main request and first auxiliary request corresponded to those considered in the decision under appeal.
- III. In its communication accompanying the summons to oral proceedings, the board expressed the view that the subject-matter of claim 1 of the five requests lacked inventive step over the disclosure of document D2 in combination with the common general knowledge of the skilled person. The board raised the question of whether the distinguishing features contributed to a technical effect.
- IV. With its letter of reply, the appellant filed new second and third auxiliary requests replacing the second to fourth auxiliary requests then on file. Furthermore, it submitted that, following the rationale of decision T 651/12, the claimed invention provided a technical solution to a technical problem. The

appellant stated that, in view of that and of a conflict in the case law between decisions T 1091/17 and T 651/12, if the board were minded to dismiss the relevance of decision T 651/12 it would appear appropriate to refer the question "as to whether a modification of an in-vehicle navigation system in a manner which affects the way in which the system presents information to the driver with a view to improve driver safety is a technical problem or merely relates to presentation of information" to the Enlarged Board of Appeal.

V. Oral proceedings were held as scheduled, during which the appellant first maintained its four claim requests and the conditional request for a referral, then submitted a new auxiliary request 1bis and later a new sole request replacing all previous requests on file. At the end of the oral proceedings, the Chair pronounced the board's decision.

VI. The appellant's final request was that the contested decision be set aside and that a patent be granted on the basis of the sole request.

VII. Claim 1 of the sole request reads as follows:

"A wireless communications system (30) comprising:
an advertising server (35); and
at least one mobile wireless communications device (33) comprising
an output device (32),
a position determining device (33) to determine a position of the device when driving, and
a processor (34) configured to
obtain at least one advertisement from said advertising server,

obtain a current driving location of said at least one mobile wireless communications device from said position determining device,
output at least one advertisement via said output device,
output, via said output device, navigation information, including road intersection information, for a route from the current location to a destination location, and
stop output of the at least one advertisement while said at least one mobile wireless communications device is moving and within a given distance of an intersection."

Reasons for the Decision

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.

Invention

2. The invention concerns displaying, on a mobile wireless communication device, advertisement and location-based navigation information for a route.

Admission into the proceedings - sole request

3. During the discussion of inventive step at the oral proceedings, the board made the observation that claim 1 of each of the then main and first to third auxiliary requests was so broad that it could also cover a navigation system for pedestrians, which could play a role in assessing which features made a technical contribution.

The appellant then submitted a new auxiliary request 1bis restricting the claimed system to a system for assisting navigation while driving. The appellant argued that the request should be admitted because it was a response to the above observation expressed for the first time at the oral proceedings. The board agrees that its communication pursuant to Article 15(1) RPBA had not mentioned this interpretation of the claim, and that the new auxiliary request 1bis restricted the claimed subject-matter and no longer covered a navigation system for pedestrians. The board considers these to be exceptional circumstances which justify admitting the amendments under Article 13(2) RPBA 2020.

After the board had expressed its preliminary view that claim 1 of the new auxiliary request was inventive, and that the case should be remitted to the first instance for examination with respect to the dependent claims, description and drawings, the appellant submitted the sole request to replace all requests then on file. Since the sole request merely incorporates an obvious correction (deletion of a redundant "and") into claim 1, and since this request does not raise any new issues, its admission contributes to procedural efficiency. Also with respect to this editorial amendment, the board finds exceptional circumstances which justify admitting the request under Article 13(2) RPBA 2020. Consequently, the board admits the sole request into the proceedings.

Clarity and added subject-matter - claim 1

4. No clarity objections have been raised by the examining division and the board finds that claim 1 is supported

by the description and clearly defines the subject-matter for which protection is sought.

5. Claim 1 is based on a combination of claim 1 as originally filed and the features specifying that the position determining device determines "the position of the device when driving", and that the obtained current location is the "current driving location". It is directly and unambiguously derivable from paragraphs [0034] and [0038] of the description as originally filed that the system of the invention, including the features of claim 1, is thought to be used for assisting navigation during driving.
6. Therefore, claim 1 fulfils the requirements of Articles 84 and 123(2) EPC.

Inventive step - claim 1

7. Document D2 discloses a mobile advertisement information delivery system comprising an advertisement server (paragraphs [0052] and [0053]; Figure 1, network navigation center 10; Figure 2; paragraph [0093]), as well as mobile wireless communication devices carried in automobiles (paragraphs [0053] and [0086]; Figures 1 and 3, instrument 12/41; claims 1 and 2). Each mobile wireless communication device comprises a display unit, position detecting means and a processor, and receives and displays advertisements from the advertisement server, and location-based navigation information while driving (paragraphs [0087] to [0097]; Figures 3 and 5). As did the examining division, the board regards D2 as the closest prior art.

- 7.1 The subject-matter of claim 1 differs from the system disclosed in document D2 in that it includes the following feature:
- stop output of the at least one advertisement while said at least one mobile wireless communications device is moving and within a given distance of an intersection.
- 7.2 In the decision under appeal, the examining division considered that this feature had the effect described in paragraph [0038] of avoiding the user being distracted by advertisements when the user is within a given distance of an intersection and is more likely to be in need of the navigational information. In the assessment of the claims then on file, the examining division considered that this effect was not technical.
- 7.3 The appellant contested that opinion, arguing that in accordance with decision T 651/12 of 14 April 2016, avoiding driver distraction for improving safety was a technical effect. The subject-matter of T 651/12 was, in the appellant's view, similar to that of the present application, and its reasoning confirmed that there was a technical problem addressed in an improved navigation system which reduced the level of driver distraction and hence improved safety of operation of the vehicle. This was exactly the effect that was provided by the distinguishing feature of the claimed invention.

According to the appellant, the distinguishing feature resulted in the driver being less distracted from the output navigation information close to the intersection. In this way, the driver was more aware of the direction to take at the intersection before reaching the intersection and could thus better focus on the road and traffic at the intersection and was better prepared to avoid a crash or other dangerous

sudden situation. Following the rationale of T 651/12, the distinguishing feature provided a technical solution to a technical problem, namely that of improving the safety of operation of a vehicle.

The appellant further argued that the claimed invention provided an "ergonomically" improved navigation system running advertisements, which was optimised for use by the driver because the system assisted the driver in making the right decisions at intersections by stopping the advertisements at a given distance from the intersections. In accordance with T 651/12, in this respect too, the distinguishing feature thus provided a technical solution to a technical problem.

- 7.4 Even though the claim does not specify how the advertisement is output, the board recognises, as did the examining division in the decision under appeal, that stopping output of an advertisement reduces the level of distraction. As a consequence, the board is satisfied that the distinguishing feature credibly contributes to the safety of operation of the vehicle by reducing the level of driver distraction in a difficult driving phase that requires higher concentration.

8. *Decision T 651/12*

- 8.1 With regard to the question of whether that effect is technical, the board agrees with the appellant that decision T 651/12 is pertinent. The claimed invention considered in that decision concerned a map display apparatus capable of displaying a bird's eye view map, which was generated by calculation means of the apparatus. The board was of the opinion that "the outcome of the calculation is used for a technical purpose, namely to display information in an

ergonomically improved manner" and that "ergonomics, understood as the applied science of refining the design of products to optimize them for human use, in the context of the map display of [that] case", was a technical field (Reasons 3.2). The board further stated the following (also Reasons 3.2):

"in the context of e.g. a car navigation system, the immediate apprehension of the presented information results in the driver being less distracted from the road and traffic and, thus, also adds to safety. Accordingly, also in this respect, displaying the three-dimensional bird's eye view map provides a technical solution to a technical problem.

As such, the board sees no fundamental difference between the present case and a method for operating a computer-controlled machine where the outcome of some calculation is used for operating the machine in an improved manner, which is generally considered technical in all aspects."

8.2 As the appellant pointed out, decision T 651/12 has recently been referenced as being "exceptional" in decision T 1091/17 of 4 June 2020, according to which the view expressed in T 651/12 that the reference to "presentations of information" in Article 52(2)(d) EPC was meant to relate exclusively to the cognitive content of the presented information ("what is presented") and not to the manner in which it is presented ("how it is presented") has not been adopted by the mainstream case law in the course of legal development. The board in decision T 1091/17 explains, with reference to several decisions, that the predominant view in the case law is what T 1235/07 of 17 March 2011 in point 11 calls the "wider view",

according to which both what is presented and how it is presented are considered to be "presentations of information" (see T 1091/17, Reasons 1.6). Similarly, decision T 1802/13 of 10 November 2016 does not follow decision T 651/12 on this question either (Reasons 2.1.5).

The board fully agrees with those conclusions in T 1091/17; however, contrary to the appellant's argument in its letter, the fact that T 1091/17 contradicts decision T 651/12 does not mean that T 651/12 is a "different decision" within the meaning of Article 112(1)(b) EPC or that a problem of uniform application of the law within the meaning of Article 112(1)(a) EPC exists. The statements in T 1091/17 and T 1802/13 merely reflect a development of the law (cf. G 3/08 of 12 May 2010, OJ EPO 2011, 10, Headnote 4).

Moreover, those two decisions diverge from T 651/12 only on account of the adoption of the "wider view" as explained above. They do not contradict T 651/12 with regard to the question of whether features of a navigation system contributing to improving safety by reducing driver distraction during driving are technical. The board is not aware of any decision clearly diverging from T 651/12 with regard to that point of view. In the following, the board describes relevant case law for the present case.

9. *Other relevant decisions*

9.1 In decision T 2035/11 of 25 July 2014, the competent board states the following (Reasons 5.2.1):

"providing real-time route-guidance information to a user in dependence on the user's real-world position is a technical task. It involves an

interaction between the user and the navigation system, wherein the navigation system continuously measures the user's position using technical means and, on the basis of these measurements, provides the user with information aimed at enabling the user to manage the technical task of moving a vehicle to a desired destination.

Although the completion of this technical task depends on the user acting upon the provided route-guidance information and hence on an intervention by the user, it does not rely on subjective considerations by the user or on psychological effects. The user may still decide to ignore the route-guidance information, but that does not detract from the technical character of the navigation system as a technical tool to be used interactively in a technical process and not merely in a preparatory phase as a substitution of what could also be done using pencil and paper."

The board in T 2035/11 then concludes that a mathematical route-planning algorithm, which as such is not technical, when used in a navigation system comprising a position-determining device and route-planning functionality dependent on the actual real-world position of the system, provides a technical contribution at least to the extent that it produces information that enables the route-guidance functionality (Reasons 5.1.3 and 5.2.2).

In the present case, claim 1 clearly specifies the distinguishing feature in the context of a navigation system with means for automatically measuring the driver's position using technical means and displaying the route in real-time in order to continuously provide information aimed at enabling the driver to move the

vehicle to a desired destination. That by itself does not mean that the distinguishing feature is technical. The presentation of information for business purposes is not technical (see e.g. T 370/15 of 28 June 2019, Reasons 3.2 and 3.3).

The distinguishing feature is based on the automatically obtained motion information, the current real-world position of the vehicle and its vicinity to a real-world intersection. By stopping the advertisement based on those physical conditions of the vehicle and its physical environment, it provides data about a technical process (see, for example, decision T 1784/06 of 21 September 2012, Reasons 3.1.1, T 2035/11, Reasons 5.1.3) and establishes a direct link with physical reality (T 489/14, OJ EPO 2019, 86, Reasons 11). The distinguishing feature could nevertheless be a mere straightforward implementation of a non-technical requirement (see e.g. T 1455/16 of 20 November 2019, Reasons 5.5), for example location-based advertisements for improving sales. However, the board is not convinced that the distinguishing feature has a business motivation, since stopping displaying advertisement in the way claimed is contrary to business objectives. As explained above, the purpose of the feature is to avoid driver distraction for improving safety, which according to T 651/12 is a technical effect.

- 9.2 In decision BGH, X ZR 47/07, GRUR 2011, 125 -*Wiedergabe topographischer Informationen* of 26 October 2010, the German Federal Court of Justice (*Bundesgerichtshof*) decided that features concerning the choice of a cartographic presentation of position-based topographic information for vehicle navigation were not technical (paragraph 39). However, the decision considered the

presentation of cartographic information to be user-friendly (see paragraph 40), and did not address the issue of whether this user-friendly presentation of information was considered to contribute to driving safety.

In decision BGH, X ZR 27/12, GRUR 2013, 909 - *Fahrzeugnavigationssystem* of 23 April 2013, the German Federal Court of Justice considered that providing street names to the driver in a vehicle navigation system was not technical. The decision recognised that the purpose of the feature was to relieve the user from looking at the screen of the navigation system (paragraph 16). However, the decision did not explicitly address the question of whether improving driving safety is technical or whether the feature was considered to credibly contribute to improving driving safety (rather than merely contributing e.g. to "user comfort", as mentioned in paragraph 28). It is also not clear whether the street names were seen as necessary for the navigation or simply as being additional optional information to meet user preferences.

9.3 In deciding whether features relating to presentation of information make a technical contribution, several criteria have been established in the case law of the Boards of Appeal.

A feature which relates to the manner in which cognitive content is conveyed to the user on a screen normally does not contribute to a technical solution to a technical problem. An exception would be if the manner of presentation can be shown to have a credible technical effect (T 1143/06 of 1 April 2009, Reasons 5.4).

According to decision T 336/14 of 2 September 2015, in assessing whether features relating to the presentation of cognitive content to the user of a graphical user interface (GUI) contribute to a technical effect, it has to be analysed whether the GUI together with the content presented credibly assists the user in performing a technical task by means of a continued and/or guided human-machine interaction process (Reasons 1.2).

According to decision T 1442/16 of 30 August 2019, one criterion for assessing the credibility of an alleged technical effect in inventions involving presentation of information is to take into account whether the alleged effect is the result of subjective psychological factors or objective physiological factors, a distinction that has already been made in several decisions (Reasons 1.8).

The mere fact that mental activities are involved does not necessarily qualify subject-matter as non-technical, but reducing the cognitive burden is not a technical effect in itself (T 1741/08 of 2 August 2012, Reasons 2.1.6; T 1143/06, Reasons 5.4).

In the present case, the board is of the opinion that the distinguishing feature assists in the continued and guided human-machine interaction, for the reasons given in point 9.1 above. The distinguishing feature is not lowering the cognitive burden, but only avoiding driver distraction. The fact that the driver can concentrate better without advertisements is not the result of a subjective psychological effect. Even if some persons may be less distracted than others by advertisements, and subjective psychological aspects can influence the degree to which an advertisement distracts a person,

anyone at any time is more distracted if an advertisement is displayed than if it is not displayed.

- 9.4 Some decisions deal with the question of increased safety, with none of them clearly denying improving safety as a technical effect.

In decision T 547/08 of 10 March 2011, the board considered that prompting the user to press a hard key in a portion of the screen display in a process of confirming entry of information into a dialysis machine contributed to the technical effect of improving safety when the dialysis machine was operated by non-trained personnel (Reasons 5.1.1 and 5.1.2).

In decision T 1188/13 of 27 October 2016, the invention concerned a method of producing a graphical representation of a text message in the context of air control messaging. The board found that the steps of parsing a text message, using rules for applying graphical enhancement, retrieving graphic components and assembling them into a graphic representation were not inventive, but the board considered that the skilled person would be aware of the safety of air control messaging and in this context would consider teachings in respect of graphical representation of textual messages on a display (Reasons 3.1 to 3.3, 5).

In decision T 336/14 the board did not believe that the distinguishing features "help[ed] a nurse in setting up the blood treatment machine in a safe and efficient way" because the information provided could not credibly support a continued and guided human-machine interaction process and thus could not assist the user in performing the technical task. However, the board

did not address the question of whether improving safety was a technical effect (Reasons 1.2.5).

10. In view of the considerations above, the board decides, in line with decision T 651/12, to recognise improved safety in the technical context of the invention, that of real-time route guidance of a driver of a vehicle, as being a technical effect, and the considerations regarding improved safety in a vehicle navigation system as being technical considerations made by the technical expert in navigation systems.

The way the advertisement is implemented is the task of the person skilled in the technical field of navigation systems faced with the non-technical requirement of displaying advertisement in the navigation system (T 641/00, OJ EPO, 352, Reasons 6). Independently of the prior art, when implementing the system in accordance with the non-technical requirements, the decision to stop displaying advertisements close to an intersection when the vehicle is in motion for safety reasons is made not by the notional business person but by the technical expert in navigation systems.

The board therefore concludes that the distinguishing feature is to be considered to make a technical contribution and has to be taken into account in the assessment of inventive step. The distinguishing feature solves the technical problem of adapting the navigation system of document D2 in order to improve driving safety.

11. With regard to the question of whether the distinguishing feature is inventive, document D2 concerns outputting advertisements at any point as an advantage over the previous limitation of providing advertisements on sign boards by the roadside. It does

not address the subject of driving safety and, with regard to some embodiments, even discloses providing advertisements close to or at road intersection points. For example, it suggests presenting an advertisement for a restaurant in the vicinity that can be reached by taking the opposite direction, thereby actively using on-screen advertisements close to a point of intersection to influence the driver to possibly change direction (paragraph [0118] and [0119], Figure 5).

12. Even though it was common general knowledge that driver distraction is to be avoided for safety reasons, the board is not convinced that the skilled person, without a hint in that direction, would have arrived at the claimed specific safety measure on the basis of the proximity to an intersection and the position and motion of the vehicle.

At the oral proceedings, the appellant argued that there were many possible technical options for the skilled person to improve driving safety in general. Since document D2 taught showing advertisements as often as possible at the right points on the driver's route, including at intersections, the skilled person attempting to improve driving safety would not consider stopping advertising as claimed as a matter of routine development, but would opt for other solutions. Consequently, the invention involved an inventive step.

The board agrees with this argument. Indeed, limiting the advertising negatively impacts the underlying business method of D2 and thus would not be considered as a matter of routine by the skilled person facing the general problem of driving safety.

The appellant also argued that even if the skilled person at all considered stopping the advertising, they would not arrive at the claimed solution, which was a sophisticated compromise between no advertising and the approach disclosed in D2, which maximised advertising.

Again, the board agrees with the appellant.

13. Document D1 relates to measuring the effectiveness of location-based advertisement and does not address the issue of driving safety either.
14. Therefore, the subject-matter of claim 1 of the main request is inventive over the cited prior art (Article 56 EPC).

Concluding remarks

15. The appellant has overcome the objections of the decision under appeal and the board has no further objections to claim 1. However, the board did not examine the dependent claims, description and drawings. The case is thus to be remitted to the department of first instance for any adaptation accordingly.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chair:



S. Lichtenvort

M. Jaedicke

Decision electronically authenticated