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**Datasheet for the decision
of 23 February 2021**

Case Number: T 2806/18 - 3.4.02

Application Number: 11862219.0

Publication Number: 2558953

IPC: G01C11/02, G01S7/497,
H04N5/349, G06F17/00,
G01S17/02, G01S17/89, G06T17/05

Language of the proceedings: EN

Title of invention:
SELF-CALIBRATED, REMOTE IMAGING AND DATA PROCESSING SYSTEM

Applicant:
Visual Intelligence LP

Relevant legal provisions:
RPBA Art. 12(4)
RPBA 2020 Art. 12(2), 12(3)

Keyword:
Admission of requests (no)



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 2806/18 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 23 February 2021

Appellant:
(Applicant)

Visual Intelligence LP
510 Bering Drive, Suite 310
Houston, TX 77057-1452 (US)

Representative:

Murgitroyd & Company
Murgitroyd House
165-169 Scotland Street
Glasgow G5 8PL (GB)

Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 16 May 2018
refusing European patent application No.
11862219.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman

R. Bekkering

Members:

F. J. Narganes-Quijano

G. Decker

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision of the examining division refusing European patent application No. 11862219.0.
- II. In its decision the examining division held in respect of the main request and the auxiliary request then on file that
 - the independent claims of the main and the auxiliary requests lacked unity within the meaning of Article 82 EPC,
 - claim 1 of the main and the auxiliary requests was not clear (Article 84 EPC), and
 - the subject-matter of claim 1 of the main and the auxiliary requests did not involve an inventive step (Article 56 EPC).
- III. With the statement setting out the grounds of appeal dated 21 September 2018 the appellant submitted claims according to a main request and auxiliary requests 1 and 2 and requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or one of auxiliary requests 1 and 2.
- IV. In a communication annexed to the summons to oral proceedings the board presented a preliminary assessment of the appellant's case.
- V. With the letter dated 19 February 2021 the appellant's representative informed the board that the appellant would not attend the oral proceedings.

VI. Oral proceedings before the board were held on 23 February 2021 in the absence of the appellant.

The chairman noted that the appellant had requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the main request or, alternatively, the claims according to auxiliary request 1 or auxiliary request 2, all requests filed with the statement of grounds of appeal dated 21 September 2018.

At the end of the oral proceedings the chairman announced the decision of the board.

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

"1. An imaging sensor system comprising:

a mount unit (304) mountable to a vehicle, having at least two imaging sensors (306-314) disposed within the mount unit, wherein a first imaging sensor (A) and a second imaging sensor (A'; B; D) each has a focal axis passing through an aperture in the mount unit, wherein the first imaging sensor generates a first image area (1902; 2002; 2102) comprising a first data array of pixels and the second imaging sensor generates a second image area (1906; 2004, 2010; 2106, 2122) comprising a second data array of pixels, wherein the first and second imaging sensors are offset to have a first image overlap area in a target area, wherein, in the first image overlap area (1904; 2006; 2112, 2114), a pixel of the first sensor's image data is bisected by a boundary between first plus third and second plus fourth pixel of the second sensor's image data and is bisected by a boundary between the first plus second and the third plus fourth pixel of the second sensor's image data,

wherein the first and the second pixel are laterally adjacent and the third and fourth pixel are laterally adjacent;

wherein the first and the third pixel are adjacent in a direction perpendicular to the lateral direction and the second and the fourth pixel are adjacent in a direction perpendicular to the lateral direction;

and wherein the first data array of pixels and the second data array of pixels are at least two dimensional."

Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that

- the introductory phrase "An imaging sensor system comprising" is replaced by the phrase "An imaging sensor system for capturing a series of images to be aligned to render a composite of a target area, the system comprising", and in that

- the expression "a first image overlap area in a target area" in the first sub-paragraph of the claim is replaced by the expression "a first image overlap area in the target area".

Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that

- the introductory phrase "An imaging sensor system for capturing a series of images to be aligned to render a composite of a target area, the system comprising" is replaced by the phrase "An imaging sensor system for simultaneously capturing an array of images to be aligned to render a composite of a target area, the system comprising",

- the feature "a mount unit (304) mountable to a vehicle, having at least two imaging sensors (306-314) disposed within the mount unit" in the first sub-paragraph of the claim is replaced by the feature

"a mount unit (304) mountable to a vehicle, having at least two imaging sensors (306-314) laterally co-mounted within the mount unit (304)", and

- the feature "wherein a first imaging sensor (A) and a second imaging sensor (A'; B; D) each has a focal axis passing through an aperture in the mount unit" in the first sub-paragraph of the claim is replaced by the feature "wherein a first imaging sensor (A) and a second imaging sensor (A'; B; D) each has a focal axis, the focal axes of the cameras converge and intersect each other within an intersection area bounded by an aperture (320) in the mount unit (304), each camera's focal axis aligns its field of view with a target area opposite its respective position in the array resulting in a 'cross-eyed', retinal relationship between the cameras and the imaging target(s)".

Reasons for the Decision

1. *Main request and auxiliary request 1 - Admission*

The claims of the main request and of auxiliary request 1 are identical to the corresponding claims of the main request and the auxiliary request underlying the decision under appeal, respectively. In addition, none of these two requests were considered allowable by the examining division for the reasons given in the decision under appeal and relating to the requirements of Articles 82, 84 and 56 EPC.

In the statement setting out the grounds of appeal the appellant referred to the arguments submitted in

preparation for the first-instance oral proceedings and stated that these arguments "are also valid" in respect of the reasons given by the examining division for the refusal of the application (statement of grounds of appeal, page 1, penultimate paragraph), without however submitting arguments as to why the reasons given by the examining division in support of the different objections raised under Articles 82, 84 and 56 EPC were wrong or not persuasive.

In view of these considerations, the board is of the opinion that the appeal filed by the appellant is not sufficiently substantiated in respect of the present main request and of present auxiliary request 1 (Article 108, third sentence, EPC) and that the appeal is not complete in respect of the mentioned requests within the meaning of Article 12(3) RPBA 2020 (which applies in the present case pursuant to Article 25(1) RPBA 2020, see also the corresponding provisions of Article 12(2) RPBA 2007 valid at the time of filing the statement of grounds of appeal), according to which the statement of grounds of appeal must contain the appellant's complete case and set out the reasons why it is requested that the decision under appeal be reversed.

In addition, according to Article 12(4) RPBA 2007 (which applies in the present case pursuant to Article 25(2) RPBA 2020), everything presented by the appellant under Article 12(1) RPBA 2020, and in particular the notice of appeal and the statement of grounds of appeal, "shall be taken into account by the Board if and to the extent it relates to the case under appeal and meets the requirements in [Article 12(2) RPBA 2007]", i.e. the requirements mentioned above by reference to Article 12(3) RPBA 2020. Since, as already

mentioned above, these requirements are not met in respect of the main request and of auxiliary request 1, these requests do not need to be taken into account in the appeal proceedings.

In these circumstances, and in the absence of any reason for doing otherwise, the board decided not to admit the main request and auxiliary request 1 into the proceedings (Article 12(4) RPBA 2007).

2. *Auxiliary request 2 - Admission*

The present auxiliary request 2 does not correspond to a request on which the decision under appeal was based and, therefore, as far as this request is concerned, the appellant's case does not satisfy Article 12(2) RPBA 2020 (which applies in the present case pursuant to Article 25(1) RPBA 2020) according to which "[i]n view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner, a party's appeal case shall be directed to the requests [...] on which the decision under appeal was based". The board notes that Article 12(2) RPBA 2020 entered into force after the statement of grounds of appeal was filed, but that the corresponding provisions reflect the established case law at the time of the filing of the statement of grounds of appeal (see, for instance, "Case Law of the Boards of Appeal", EPO, 9th edition 2019, section V.A.4.2.2).

In addition, according to Article 12(4) RPBA 2007 (which applies in the present case according to Article 25(2) RPBA 2020) the board has discretion "to hold inadmissible [...] requests which could have been presented [...] in the first instance proceedings". In

the present case, it is apparent from a comparison of the wording of claim 1 of auxiliary request 2 with the wording of claim 1 of both the main request and auxiliary request 1 (see point VII above) that the amendments introduced into claim 1 of auxiliary request 2 were directed to overcome the objections raised by the examining division - in particular, the objection of lack of inventive step raised by the examining division in preparation for the first-instance oral proceedings, see decision under appeal, section "Summary of Facts and Submissions", point 8 - in respect of the main and the auxiliary requests then on file, and that auxiliary request 2 could already have been submitted during the first instance proceedings in reply to the mentioned objections. In addition, the board does not see any reason - and the appellant has submitted none - that would justify filing the claims of auxiliary request 2 for the first time with the statement of grounds of appeal.

In these circumstances, the board decided not to admit auxiliary request 2 into the proceedings under Article 12(4) RPBA 2007.

3. In view of the above considerations, none of the requests submitted by the appellant is admitted into the appeal proceedings and, consequently, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



H. Jenney

R. Bekkering

Decision electronically authenticated