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**Datasheet for the decision  
of 9 December 2021**

**Case Number:** T 2222/19 - 3.5.04

**Application Number:** 13003346.7

**Publication Number:** 2685707

**IPC:** H04N5/232

**Language of the proceedings:** EN

**Title of invention:**

System for spherical video shooting

**Applicant:**

Virtualmind di Davide Angelelli

**Headword:**

**Relevant legal provisions:**

EPC Art. 108

EPC R. 101(1), 99(2)

RPBA 2020 Art. 12(1)(a), 12(3)

**Keyword:**

Admissibility of appeal - appeal sufficiently substantiated  
(no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 2222/19 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 9 December 2021**

**Appellant:** Virtualmind di Davide Angelelli  
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**Representative:** Garavelli, Paolo  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 4 February 2019  
refusing European patent application  
No. 13003346.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** B. Willems  
**Members:** B. Le Guen  
G. Decker

## Summary of Facts and Submissions

- I. The appeal is against the decision to refuse European patent application No. 13 003 346.7.
- II. The decision was based on the following grounds, *inter alia*.
  - (a) Claims 1, 4 and 7 to 9 of the sole request then on file did not meet the requirements of Article 84 EPC.
  - (b) The subject-matter of independent claim 1 did not involve an inventive step in view of the disclosure of document D7 combined with either the common general knowledge of the person skilled in the art or the disclosure of document D8. Document D7 disclosed all the features of claim 1 except for the feature "*at least one laser detector of telemetric data, which can also be used as lighting device for tracking objects or moving means*". It was not apparent what technical effect was achieved by this distinguishing feature other than distance information being determined. From common general knowledge, the person skilled in the art knew about rangefinders as devices for measuring the distance from a target, and would have "selected to employ" a laser rangefinder in a straightforward manner. Alternatively, the person person skilled in the art would have consulted document D8, which taught the use of a laser rangefinder to provide distance information in a system for 360° spherical image-shooting.

- (c) The subject-matter of independent claim 7 did not involve an inventive step in view of the disclosure of document D7 combined with the common general knowledge of the person skilled in the art. Document D7 disclosed all the features of claim 7 except for the feature that the fields of vision of the video cameras and related recorded images overlapped "*by about 5-20°*". There was no indication in the description of the application that selecting this specific range resulted in a particular technical effect. The subject-matter of claim 7 appeared to be the result of optimising the amount of overlap. Such optimisation fell within the scope of what the person skilled in the art would have done as a matter of routine.
- (d) The subject-matter of dependent claims 2 to 6 and 8 and 9 did not meet the requirements of Article 56 EPC for the reasons provided in section 37 of the communication annexed to the summons to oral proceedings.

III. The applicant (appellant) filed notice of appeal. With the statement of grounds of appeal, the appellant filed a set of amended claims and requested that the decision under appeal be set aside and that "*European Patent Application No. 13003346.7 be reinstated*". The appellant submitted that the set of amended claims was filed to "*remove the clarity problems pointed out*" by the examining division in the decision under appeal and explained the amendments which had been made to the claims. Furthermore, the last paragraph on page 2 of the statement of grounds of appeal reads as follows.

*"Regarding the technical reason for the performed modifications, at the time of filing the present*

*Application, there was not in the world a single recording apparatus at 360° integrated with a laser telemeter; moreover, the optics which produce dimensional images, if supported by a laser telemeter, are able to perceive also the distances (technologies which are useful in the autonomous driving of vehicles). In fact, while the panoramic optics take care of the spherical recording, the laser telemeter perceives the shot objects in terms of distances. It follows that the optics helped by the laser telemeter create a device which is able to perceive the space in terms of image at 360° (bi-dimensional perception) and through the laser telemeter of telemetric perception, namely three-dimensionally."*

- IV. In a communication pursuant to Rule 100(2) EPC dated 30 June 2021, the board expressed doubt as to whether the reasons for the examining division's finding that the subject-matter of claim 1 lacked inventive step had been addressed in the statement of grounds of appeal. Furthermore, the board expressed its view that the statement of grounds of appeal did not address the examining division's objection under Article 56 EPC relating to the former claim 7. Since at least one of the independent reasons in the decision under appeal had not been addressed in the statement of grounds of appeal, the board was of the preliminary opinion that the requirements of Rule 99(2) EPC had not been met, and therefore that the appeal should be rejected as inadmissible in accordance with Rule 101(1) EPC.
- V. With a reply dated 25 August 2021, the appellant made the following submissions (see paragraphs in bold in the appellant's reply):

- *"The inventive step is on the limited number of optics and on miniaturization, as can also be seen from the description. The laser rangefinder device is necessary to perceive distances but above all to recompose the shape of objects in three-dimensional form (shape recognition)".*
- *"in claim 7 we explain how it is necessary to overlap the images to recompose the entire visible sphere. this is only a deepening of claim 5 and 6, the miniaturization obtained in this new patent is the analysis of many control points despite the limited number of optics".*
- *"The inventive step is based on the limited number of optics in relation to major overlap control points with the aid of laser rangefinders that aid accuracy".*
- *"As mentioned, the laser rangefinder helps to control the control points of the overlapping of the images and also returns the three-dimensionality of the objects. follows that the optics helped by the laser telemeter create a device which is able to perceive the space in terms of image at 360° (bi-dimensional perception) and through the laser telemeter of telemetric perception, namely three-dimensionally".*
- *"According to the above replies, we now believe that the statement of grounds and the description contained all bases for substantiating the Appeal".*
- *"The Applicant did not take part in the Oral Proceedings and did not file the New Set of Claims since it was impossible to convince the Examiner of the First Instance, who since the beginning did not seem to understand the scope, the technical solution and the objects of the present Application: since Oral Proceedings held by a*

*Primary Examiner who has already reached a negative decision never provide a reversal of such decision, we decided to leave the matter of understanding the present Application to other higher-level Examiners (Appeal Examiners) to whom the present Application could be explained starting again without prejudices".*

- VI. The board issued summons to oral proceedings and a communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal 2020 ("RPBA 2020"; see OJ EPO 2019, A63). In this communication, the board stressed that the requirements of Rule 99(2) EPC were formal requirements applying to the statement of grounds of appeal and emphasised that further arguments as to the substance, which were submitted only after the time limit under Article 108 EPC for filing the statement of grounds of appeal, were irrelevant for assessing the admissibility of the appeal. Therefore, it had to be discussed at the oral proceedings before the board whether the statement of grounds of appeal indicated reasons for setting aside the decision, in particular whether it addressed the reasons provided by the examining division as to why the subject-matter of the then claims 1 and 7 did not involve an inventive step. The board was of the preliminary opinion that none of the comments submitted by the appellant in its reply dated 25 August 2021 identified parts of the statement of grounds of appeal addressing the objections raised in the decision. The amended claims filed with the statement of grounds of appeal appeared to have been solely intended to address the reasons given for the finding of lack of clarity (Article 84 EPC) and not the reasons given for lack of inventive step (Article 56 EPC). The last paragraph on page 2 of the statement of grounds of appeal only recalled facts

that were not under dispute; however, it did not explain why the decision was incorrect in finding that the person skilled in the art would have combined the disclosures of documents D7 and D8, and in doing so, would have arrived at the subject-matter of claim 1.

VII. Oral proceedings were held before the board on 9 December 2021 by videoconference.

The appellant's final requests were that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the sole request filed with the statement of grounds of appeal.

At the end of the oral proceedings, the chair announced the board's decision.

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

(a) The last paragraph on page 2 of the statement of grounds of appeal, especially the second part of that paragraph starting with "*moreover, ...*", implicitly addressed the reasons given in the decision and implicitly contained reasons why the subject-matter of claims 1 and 5 of the sole request filed with the statement of grounds of appeal involved an inventive step. The reasons why it was requested that the decision be set aside would have been immediately clear to the person skilled in the art, in particular upon reading the decision and the application.

(b) The reasons why the subject-matter of the then claims 1 and 7 involved an inventive step had already been provided to the examining division

during the examination proceedings. Since it was impossible to convince the examining division, the appellant let the examination proceedings come to an end and filed an appeal so that the case could be considered by someone else. This appeal was meant to be a continuation of the examination proceedings.

(c) In deciding whether this appeal is admissible, the board was asked to take into account the following alleged facts.

- (i) The examination proceedings took a long time and were not very clear.
- (ii) The first-instance oral proceedings had been scheduled for a day on which the representative was not available. The examiner had refused to change the date.
- (iii) The task of the European Patent Office was to grant patents for inventions involving an inventive step. A patent should have been granted for the invention in hand. The examiner's reply dated 30 May 2018 completely disregarded the comments about the fact that the system disclosed in document D7 was a tele-camera, that it was not miniaturised and was not capable of being used inside a human body.

## **Reasons for the Decision**

1. *Relevant legal provisions*

- 1.1 Under Article 108 EPC a statement setting out the grounds of appeal must be filed within four months of notification of the decision in accordance with the Implementing Regulations.
- 1.2 Rule 99(2) EPC stipulates that, in the statement of grounds of appeal, the appellant should indicate the reasons for setting aside the decision under appeal, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based.
- 1.3 Furthermore, according to Article 12(3) RPBA 2020, as is applicable to the case in hand pursuant to Article 25(1) RPBA 2020, *"the statement of grounds of appeal and the reply shall contain a party's complete appeal case. Accordingly, they shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the requests, facts, objections, arguments and evidence relied on"*.
- 1.4 Pursuant to Rule 101(1) EPC, if the appeal does not comply with Rule 99(2) EPC, the board must reject it as inadmissible, unless any deficiency has been remedied before the relevant period under Article 108 EPC has expired.
2. *Relevant case law*
  - 2.1 It is established case law that the appeal procedure is not a continuation of the first-instance procedure, but a distinct procedure in which any facts, evidence or arguments considered relevant **must**, if need be, be resubmitted (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019 ("Case Law"), V.A.2.6.3 c) and e)).

2.2 For an appeal to be admissible, the statement setting out the grounds of appeal **must** enable the board to understand immediately why the decision under appeal is incorrect and on what facts the appellant bases its arguments, without first having to make investigations of its own (see Case Law, V.A.2.6.3 a)).

2.3 If there are several independent reasons in the decision to refuse the application and at least one of those reasons was not addressed in the statement of grounds, then the requirements of Rule 99(2) EPC are not met (see Case Law, section V.A.2.6.3 c)).

### 3. *Admissibility of the appeal*

3.1 For the following reasons, the board finds that the requirements of Rule 99(2) EPC are not met in the appeal case in hand.

3.2 It is not immediately clear to the board that the amendments made to the claims according to the request filed with the statement of grounds of appeal address the reasons for lack of inventive step given in the decision under appeal with respect to the former claims 1 and 7. As a matter of fact, the first sentence of the statement of grounds of appeal indicates that "*A New Set of Claims has been filed in order to remove the clarity problems pointed out in the Decision to refuse*". Therefore, the amendments were solely intended to address the reasons given for the finding of lack of clarity (Article 84 EPC) and not the reasons given for lack of inventive step (Article 56 EPC). This also applies to the appellant's comments in the statement of grounds of appeal from page 1, last paragraph, to page 2, penultimate paragraph.

- 3.3 The only remaining passage of the statement of grounds of appeal is the last paragraph on page 2, which is reproduced under point III. above.
- 3.4 The board disagrees with the appellant that this paragraph implicitly contained reasons why the subject-matter of claims 1 and 5 of the sole request filed with the statement of grounds of appeal involved an inventive step (see point VIII.(a) above).
- 3.5 The first comment in this paragraph ("*at the time of filing the present Application, there was not in the world a single recording apparatus at 360° integrated with a laser telemeter*") relates to the question of novelty, and therefore does not address the question of inventive step. The fact that the subject-matter of the former claims 1 and 7 was new was implicitly acknowledged in the decision under appeal.
- 3.6 The remainder of the paragraph explains the effect of the laser telemeter when it is integrated in a "*recording apparatus at 360°*". More specifically, the paragraph indicates that the laser telemeter "*perceives the shot objects in terms of distances*" and thus makes it possible to produce a device "*which is able to perceive the space in terms of image at 360° (bi-dimensional perception) ... namely three-dimensionally*".

The board notes that the decision under appeal already acknowledged this effect. Point 2.1.2 on page 7 of the decision indeed states that the laser telemeter in document D8 was used "*for the same purpose of determining distance information in a system for 360° spherical image-shooting*"; therefore, it would have

been obvious for the person skilled in the art to *"apply this feature with corresponding effect to the system of D7, thereby arriving at a system according to claim 1"*.

3.7 It follows from the last two points that the last paragraph on page 2 of the statement of grounds of appeal merely recalls facts that were not the basis for refusing the application. It does not explain why the decision was incorrect in finding that the person skilled in the art would have combined the disclosures of documents D7 and D8, and in doing so, would have arrived at the subject-matter of claim 1. It also does not address the examining division's independent inventive-step objection raised with respect to the former claim 7. It is also not immediately evident why the expression *"... by about 5-20° or more"* (emphasis added by the board) in amended claim 5 of the request filed with the statement of grounds of appeal (corresponding to the former claim 7) overcomes the examining division's objection. Therefore, it at least does not address the reasons given under points 2.1.2, 2.2.1 and 2.2.2 of the decision.

3.8 The appellant's arguments reproduced under point VIII.(b) and point VIII.(c) above are not persuasive.

3.8.1 Since the appeal procedure is not a continuation of the first-instance procedure, but a distinct procedure in which any facts, evidence or arguments considered relevant **must**, if need be, be resubmitted (see point 2.1 above), the fact that reasons were provided during the examination proceedings (see point VIII.(b) above) is not relevant to the question of whether the requirements of Rule 99(2) EPC are met. This can also

be seen from Article 12(1)(a) RPBA 2020 (applicable to the case in hand pursuant to Article 25(1) RPBA 2020), which stipulates that appeal proceedings are based on the decision under appeal and minutes of any oral proceedings before the department having issued that decision. It follows that submissions by a party in response to a communication from a first-instance department are not part of the appeal proceedings.

- 3.8.2 The board has no discretionary power to hold an appeal admissible when the requirements of Rule 99(2) EPC are not met. Pursuant to Rule 101(1) EPC, if the appeal does not comply with Rule 99(2) EPC, the board "*shall*" (i.e. **must**) reject it as inadmissible, unless any deficiency has been remedied before the relevant period under Article 108 EPC has expired. In the case in hand, no further substantiation was provided by the appellant within the four-month time limit under Article 108 EPC for filing the statement of grounds of appeal. Therefore, the consequence of the first sentence of point 3.1 above must be that the appeal is rejected as inadmissible, irrespective of whether the facts alleged by the appellant in points VIII.(c)(i), VIII.(c)(ii) and VIII.(c)(iii) above are accurate.

## **Order**

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

The appeal is rejected as inadmissible.

The Registrar:

The Chair:



K. Boelicke

B. Willems

Decision electronically authenticated