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**Datasheet for the decision
of 28 October 2024**

Case Number: T 1934/21 - 3.5.04

Application Number: 15850839.0

Publication Number: 3207717

IPC: H04N21/84, H04N21/235, G06K9/00

Language of the proceedings: EN

Title of invention:

SYSTEM, APPARATUS AND METHOD FOR CONFIGURATION OF INDUSTRIAL
VISION CONTROL MODULES

Applicant:

Eigen Innovations Inc.

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

All requests - amendments - extension beyond the content of
the application as filed (yes)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1934/21 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 28 October 2024

Appellant: Eigen Innovations Inc.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 2 June 2021
refusing European patent application
No. 15850839.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair B. Willems
Members: A. Seeger
G. Decker

Summary of Facts and Submissions

- I. The appeal is against the examining division's decision to refuse European patent application No. 15 850 839.0.
- II. The decision under appeal was based, *inter alia*, on the ground that claim 1 of the main request and the first auxiliary request then on file did not meet the requirements of Article 123(2) EPC.
- III. The applicant (appellant) filed notice of appeal. With the statement of grounds of appeal, the appellant filed claims according to a second auxiliary request. The appellant requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the main request or, alternatively, on the basis of the claims of either the first or the second auxiliary request. Furthermore, it requested oral proceedings. The appellant indicated a basis in the application as filed for the claimed subject-matter and provided arguments to support its opinion that the claims met the requirements of Article 123(2) EPC.
- IV. The appellant was summoned to oral proceedings. In a communication under Article 15(1) RPBA, the board gave, *inter alia*, the preliminary opinion that claim 1 of the main request and of the first and second auxiliary requests did not meet the requirements of Article 123(2) EPC.
- V. By letter dated 2 October 2024 the appellant withdrew its request for oral proceedings and asked for a

decision on the file as it stood. The case can thus be decided without holding oral proceedings.

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

"A server (124) comprising:

a memory (204);

a network interface (208) connecting the server (124) with a vision control module (104) coupled to a process controller (112) controlling production equipment for manipulating items; and

a processor (200) interconnected with the memory (204) and the network interface (208), the processor (200) configured to:

receive (305), via the network interface (208), a set of images depicting the items from the vision control module (104);

(a) for each image in the set:

classify the image to (i) select one of a plurality of classes that corresponds to the image, and (ii) generate an error measurement associated with the selected class; and

determine whether the error measurement exceeds a threshold;

(b) for a subset of the images each having an error measurement exceeding the threshold, generate (320) a plurality of clusters distinct from the classes and based on predefined attributes of the images;

(c) present (325) the clusters at a display;

(d) receive user input data (330) defining a label corresponding to at least one image in at least one of the clusters;

(e) generate (335) classification parameters corresponding to the label from the predefined attributes of the at least one image, the

classification parameters defining at least a further class in addition to the plurality of classes; and
generate and transmit (340) control parameters to the vision control module (104), the control parameters including (i) the classification parameters and (ii) a control action for execution at the process controller (112) when the vision control module (104) determines that a further image satisfies the classification parameters; the control action defining a manipulation of the items performed by the process controller (112)."

VII. Claim 1 of the first auxiliary request differs from claim 1 of the main request only in feature (b) and in the final paragraph.

Feature (b) of the first auxiliary request reads as follows:

"determine that at least a predefined number of the images have respective error measurements exceeding the threshold, and in response generate (320), from the predefined number of the images, a plurality of clusters distinct from the classes and based on predefined attributes of the predefined number of images;"

The final paragraph of claim 1 of the first auxiliary request reads as follows (features deleted compared with the final paragraph of claim 1 of the main request are ~~struck through~~):

"generate and transmit (340) control parameters to the vision control module (104), the control parameters including ~~(i)~~ the classification parameters ~~and (ii)~~ a

~~control action for execution at the process controller (112) when the vision control module (104) determines that a further image satisfies the classification parameters; the control action defining a manipulation of the items performed by the process controller (112)."~~

VIII. Claim 1 of the second auxiliary request reads as follows (features added compared with claim 1 of the main request are underlined, and deleted features are ~~struck through~~):

"A server (124) comprising:
a memory (204);
a network interface (208) connecting the server (124) with a vision control module (104) coupled to a process controller (112) controlling production equipment for manipulating items; and
a processor (200) interconnected with the memory (204) and the network interface (208), the processor (200) configured to:

receive (305), via the network interface (208), a set of images depicting the items from the vision control module (104);

(a) for each image in the set:

classify the image to (i) select one of a plurality of classes that corresponds to ~~the~~ a set of image attributes, and (ii) generate an error measurement associated with the selected class; and
determine whether the error measurement exceeds a threshold;

(b) for a subset of the images ~~each having for~~ which an error measurement ~~exceeding~~ exceeds the threshold, generate (320) a plurality of clusters

~~distinct from the classes and based on predefined attributes of the images;~~

(c) select at least one sample image from each cluster and present (325) the sample images
~~elusters at a display;~~

(d) receive user input data (330) defining a label corresponding to at least one image in ~~at least one~~
each of the clusters;

(e) apply the received labels to all images in the clusters and generate (335) classification parameters corresponding to the label by identifying a set of image parameters that divide the labelled images into classes according to their labels from the predefined attributes of the at least one image, the classification parameters defining at least a further class in addition to the plurality of classes; and

generate and transmit (340) control parameters to the vision control module (104), the control parameters including (i) the classification parameters and (ii) a control action for execution at the process controller (112) when the vision control module (104) determines that a further image satisfies the classification parameters; the control action defining a manipulation of the items performed by the process controller (112)."

Reasons for the Decision

1. The appeal is admissible.
2. Main request and first auxiliary request - added subject-matter (Article 123(2) EPC)
- 2.1 According to Article 123(2) EPC, the European patent application may not be amended in such a way that it

contains subject-matter which extends beyond the content of the application as filed.

According to the consistent interpretation of Article 123(2) EPC by the Enlarged Board of Appeal, any amendment to parts of a European patent application relating to the disclosure can only be made within the limits of what the person skilled in the art would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole disclosure of the description, claims and drawings of the application as filed (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition, 2022, II.E.1.1).

- 2.2 Claim 1 of the main request and the first auxiliary request comprises the following feature: *"classify the image to (i) select one of a plurality of classes that corresponds to the image, and (ii) generate an error measurement associated with the selected class"*.
- 2.3 As a basis for this amended feature the appellant referred to Figure 3, block 310 and paragraph [0034] (see the appellant's submission dated 11 November 2019 including a marked-up version of the claims).
- 2.4 Block 310 of Figure 3 indicates *"Classify image data"*. Paragraph [0034] of the application as filed reads in the relevant part: *"At block 315, server 124 is configured to determine whether an error metric associated with the classification at block 310 exceeds a predefined threshold. Various classification techniques include the generation of a measurement of confidence in the classification of each image"*.

2.5 These parts of the application as filed do not provide a basis for the feature "*error measurement associated with the selected class*" (emphasis added by the board).

This feature specifies that the error measurement is associated with the selected class, i.e. that the generated error measurement is specific or linked to the selected class.

However, paragraph [0034] of the application as filed only discloses "*an error metric associated with the classification at block 310*", i.e. the general block indicating "*Classify image data*". Here, the generated error measurement is not associated with the specific class selected during the classification.

2.6 Therefore, the board finds that the feature of claim 1 of the main request and the first auxiliary request "*error measurement associated with the selected class*" contains subject-matter which extends beyond the content of the application as filed.

2.7 In view of the above, the main request and the first auxiliary request are not allowable because claim 1 thereof does not meet the requirements of Article 123(2) EPC.

3. Second auxiliary request - admittance (Article 12(4) RPBA) and added subject-matter (Article 123(2) EPC)

3.1 The board admits the second auxiliary request into the appeal proceedings under Article 12(4) RPBA since dealing with it is not detrimental to procedural economy.

- 3.2 Claim 1 of the second auxiliary request comprises the following feature: *"classify the image to (i) select one of a plurality of classes that corresponds to a set of image attributes, and (ii) generate an error measurement associated with the selected class"*.
- 3.3 This feature specifies that there is an *"error measurement associated with the selected class"* in the same way as in the corresponding feature of claim 1 of the main request and the first auxiliary request (see point 2.2 above).
- 3.4 Hence, this feature does not have a basis in the application as filed, for the same reasons as those set out under points 2.3 to 2.6 for claim 1 of the main request and the first auxiliary request.
- 3.5 Therefore, the second auxiliary request is not allowable because claim 1 thereof does not meet the requirements of Article 123(2) EPC.

4. Conclusion

The main request as well as the first and second auxiliary requests are not allowable because claim 1 of each of these requests does not meet the requirements of Article 123(2) EPC. Since none of the appellant's requests is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



C. Spira

B. Willems

Decision electronically authenticated