Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 28 July 2025

Case Number:	T 1226/23 - 3.4.03
Application Number:	14792939.2
Publication Number:	3060447
IPC:	G07C5/08, G07C5/00, G06Q10/06, B60W50/14, B60K35/00, B60W30/04, B60W30/12, B60W30/16, B60W40/09, B60W50/00, B60W50/04
Language of the proceedings:	EN

Title of invention:
DRIVER SCORECARD SYSTEM AND METHOD

Patent Proprietor:
Trimble Inc.

Opponent:
WijnstraWise Patents B.V.

Relevant legal provisions:
EPC Art. 52(1), 56, 100(a)
RPBA 2020 Art. 12(3), 12(5), 13(1), 13(2)

Keyword:
Inventive step - (no)
Auxuiliary requests 1 to 3, 2B, 1A - requirements of Art. 12(3) RPBA 2020 met (no)
Auxiliary requests 1 to 3, 2B, 1A - admitted (no)

Decisions cited:
G 0001/24, T 1999/23, T 1465/23, T 0161/24, T 0651/12, T 0505/18, T 2035/11, T 1194/97, G 0001/19, T 0641/00, T 1220/21, T 0559/20, T 2202/21

Europäisches Patentamt
European Patent Office
Office européen des brevets

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

Case Number: T 1226/23 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 28 July 2025

Appellant: (Opponent)	WijnstraWise Patents B.V. Noordsche Bosch 6 1151 DB Broek in Waterland (NL)
Representative:	Wijnstra, Reinier WijnstraWise Patents B.V. Noordsche Bosch 6 1151 DB Broek in Waterland (NL)
Respondent: (Patent Proprietor)	Trimble Inc. 935 Stewart Drive Sunnyvale CA 94085 (US)
Representative:	Grünecker Patent- und Rechtsanwälte PartG mbB Leopoldstraße 4 80802 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 3 May 2023 rejecting the opposition filed against European patent No. 3060447 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	T. Häusser
Members:	M. Ley
	T. Bokor

Summary of Facts and Submissions

I. The appeal by the opponent is against the decision of the opposition division rejecting the opposition against European patent EP-B-3 060 447 pursuant to Article 101(2) EPC.

II. The impugned decision cited *inter alia* the following document:

D1 US 2009/0284361 A1

III. The appellant requests that the impugned decision be set aside and the opposed patent be revoked.

IV. The respondent (patent proprietor) requests that the appeal be dismissed (main request) or that the impugned decision be set aside and the opposed patent be maintained on the basis of one of auxiliary requests 1 to 3, 2B or 1A, in this order.

Auxiliary requests 1 to 3 were filed with the reply to the notice of opposition on 30 August 2021.

Auxiliary request 2B was filed with the reply to the statement setting out the grounds of appeal.

Auxiliary request 1A was filed with the letter dated 27 June 2025 and corresponds to auxiliary request 1A filed with the reply to the statement setting out the grounds of appeal with method claims 10 to 14 deleted.

V. Claim 1 of the main request (patent as granted) has the following wording (appellant's feature labelling):

M1.1 A system, comprising:

M1.2 an interface configured to receive vehicle data acquired by a computer system (1120) of a vehicle;

M1.3 a wireless transceiver (1108) configured to effect communications with a central office via one or more networks;

M1.4 a display (1104);

M1.5 memory configured to store scoring algorithms; and

M1.6 a processor (1105) configured to:

M1.6.1 receive at least some of the vehicle data;

M1.6.2 generate, in substantially real-time and independently from the central office, a plurality of scores for a plurality of scoring parameters using the stored scoring algorithms and the received vehicle data; and

M1.6.3 update, in substantially real-time and independently from the central office, the plurality of scores during a predetermined period of time, wherein the predetermined period of time is defined by a driver's terminal day which is initiated at the driver's terminal start time and completed at the driver's terminal end time,

M1.6.4 wherein the processor is further configured to: cooperate with the display to present the plurality of scores on the display during a safe mode of operation;

M1.6.5 cooperate with the display to present at times other than during the safe mode of operation a count of scoring event occurrences and associated score deductions for each scoring parameter during the driver's terminal day; and

M1.6.6 cooperate with the display to present a scorecard history computed from the count of scoring event occurrences and associated score deductions for a plurality of past terminal days of the driver.

Claim 1 of auxiliary request 1 corresponds to granted claim 1, wherein feature M1.6.6 is amended as follows:

M1.6.6$_{AR1}$ cooperate with the display to present at times other than during the safe mode of operation a scorecard history computed from the count of scoring event occurrences and associated score deductions for a plurality of past terminal days of the driver.

Claim 1 of auxiliary request 2 corresponds to claim 1 of auxiliary request 1, wherein feature M1.6.4 is amended as follows:

M1.6.4$_{AR2}$ wherein the processor is further configured to: cooperate with the display to present the plurality of scores on the display during a safe mode of operation, wherein the safe mode of operation corresponds to an operating status of the vehicle other than park;

Claim 1 of auxiliary request 3 is identical to granted claim 1.

Claim 1 of auxiliary request 2B corresponds to claim 1 of auxiliary request 2 with the following additional feature added at the end of the claim:

M1.6.7 wherein the system comprises an in-cab computing device (1102) communicatively coupled to the interface (1107) and transceiver (1108), the in-cab computing device comprising the display (1104), memory, and processor (1105).

Claim 1 of auxiliary request 1A corresponds to claim 1 of auxiliary request 2 with features M1.4, M1.6.4, and M1.6.5 amended as follows:

$M1.4_{AR1A}$ an in-cab display (1104);

$M1.6.4_{AR1A}$ wherein the processor is further configured to: cooperate with the display to present the plurality of scores on the display during a safe mode of operation, wherein the safe mode of operation corresponds to an operating status of the vehicle other than park, wherein the [sic] presenting the plurality of scores on the display during the safe mode of operation comprises displaying only a limited amount of scoring information on the display;

$M1.6.5_{AR1A}$ cooperate with the display to present at times other than during the safe mode of operation a count of scoring event occurrences and associated score deductions for each scoring parameter during the driver's terminal day, so that the driver has access to more detailed scoring information; and

VI. The appellant argued that the subject-matter of granted claim 1 lacked novelty over the disclosure of D1 or at least did not involve an inventive step over D1. The auxiliary requests were not substantiated in the reply to the statement setting out the grounds of appeal and thus should not be admitted into the appeal proceedings.

The respondent argued that the subject-matter of granted claim 1 was new and involved an inventive step over the disclosure of document D1. The auxiliary requests should be admitted into the appeal proceedings as they were filed in reaction to the objections raised in the grounds of appeal against the granted claims.

Reasons for the Decision

1. The invention as claimed is an improved system for monitoring driving by providing a system of assessing driver behaviour and giving timely feedback on such behaviour to the driver, see paragraphs [0002] and [0006] of the opposed patent.

Vehicle data and possibly data generated by other sensors are received and processed by a processor, e.g. within the vehicle. Scores are generated using algorithms and updated in substantially real-time. These scores are displayed during a "safe mode of operation". Other data include the count of scoring event occurrences (e.g. events that show behaviour of a bad driver) and associated score deductions (e.g. the number of points subtracted from a driver score between 0 and 100 points when such an event has occurred during driving), see Figures 2 and 3 of the opposed patent. As claimed, such other data are displayed at times other than the safe mode of operation. A scorecard history

computed from such other data may also be displayed according to the claimed system.

2. Main request - novelty (Articles 100(a), 52(1), 54(1) and (2) EPC)

2.1 Appellant's position

2.1.1 The appellant argued that the subject-matter of claims 1 and 10 was known from document D1.

2.1.2 It was undisputed that features M1.1 to M1.6.1 were disclosed in D1.

2.1.3 Paragraphs [0001], [0015], [0054] and [0059] of D1 disclosed the possibility of monitoring several activities and thus several scoring parameters. D1 was not limited to monitoring of lane keeping, i.e. to one single scoring parameter, the "lane keeping ability" of the driver, contrary to what was concluded by the opposition division.

It was evident from paragraphs [0001] and [0002] of D1 that other erratic driving behaviour was to be monitored. Other types of events were detected, e.g. by the different types of sensors shown in Figure 5, see paragraphs [0055] and [0059], an event being an instance of poor driving. The scoring process of D1 could thus also take into account measurements from sensors other than those for tracking lane keeping (e.g. the in-vehicle audio level sensor, the accelerometer, the sleep detection sensor, other "behavioral sensors", etc.).

Data related to detected events were stored in event tables. Paragraph [0066] of D1 stated that event points

values were looked up in lookup tables. This would be unnecessary when monitoring only one type of event (i.e. the "lane keeping ability").

2.1.4 Hence, other types of events were monitored and scores associated thereto were calculated in real-time and displayed as disclosed in Figures 9 to 11 of D1.

More specifically, the appellant argued that paragraphs [0072] and [0075] of D1 disclosed multiple "scores": the "visual alert" (see also the last sentence of paragraph [0035]), the values z/z_0, the accumulated series score M_series or the upward/downward arrow (mentioned e.g. in paragraph [0073]).

The wording of claim 1 did not exclude that the scores displayed might be "interrelated" and did not require a one-to-one correspondence between a score and a scoring parameter.

The terms "generate in substantially real-time" or "update in substantially real-time" data were to be understood as in contrast to generate or update data "at the end of the day".

D1 thus disclosed a plurality of scores for a plurality of scoring parameters so that feature M1.6.2 as well as feature M1.6.3 were disclosed in D1.

2.1.5 With respect to the wording of feature M1.6.2, the appellant also added that the skilled person did not find in the opposed patent a basis to support a plurality of scores to be displayed during a safe mode of operation, see paragraphs [0006], [0008] and [0031] or Figures 2 to 5 not disclosing that several scores were displayed. Only a "driving score" was disclosed to

be displayed in the safe mode of operation, while driver grades for each scoring parameter were presented when the vehicle was not being operated, contrary to the wording of feature M1.6.2. Paragraphs [0011] and [0030] did not relate to the safe mode of operation.

There was no embodiment in the opposed patent with a plurality of scores displayed during a safe mode of operation. It could not be said that a score as claimed was necessarily obtained by point deductions.

2.1.6 From the wording of feature M1.6.4, it was not sufficiently clear what a "safe mode of operation" was. Paragraphs [0021] and [0031] of the opposed patent seemed to disclose that the "safe mode of operation" occurred while the vehicle was in operation, in contrast to "non-operating times, such as when the vehicle is in park", see paragraphs [0008] and [0019]. The opposed patent did not disclose that the "operating status of the vehicle" coincided with the status "other than park". Any mode in which the vehicle was operated should thus be considered as an "operating status of the vehicle", e.g. when the vehicle was on and stopped at a traffic light or at a crossroad.

The appellant agreed with the opposition division that the scores were displayed live during the driving period, i.e. in a safe mode of operation, see paragraph [0035] and Figure 5, items 130 and 132 of D1. This was done for a plurality of scoring parameters, as explained by the appellant. Paragraph [0012] also disclosed that the "current points" (in plural) were displayed.

Insofar, contrary to what the respondent alleged, there were no contradictions between paragraphs [0063] to

[0067], Figure 9, paragraph [0068] to [0071], Figure 10 and paragraphs [0072] to [0075], Figure 11 as they related to different parts of the process of D1, in which event tables and user tables were updated and stored in a memory.

2.1.7 With respect to feature M1.6.5, the appellant agreed with the opposition division that D1 used a count of scoring event occurrences (e.g. Figure 10, reference signs 372, 362) and an associated score deduction ([0014], Figure 10, reference signs 376, 377, 378; Table 5). These data were displayed to the driver, see paragraph [0072], [0073] and [0075]. Reference was also made to paragraphs [0011] and [0012] of D1 to show that displaying data according to feature M1.6.5 was implicit in D1.

2.1.8 Feature M1.6.6 did not specify when the scorecard history was displayed, see also paragraph [0008] of the opposed patent. The appellant argued that, in D1, a scorecard history was computed from the count of scoring event occurrences and associated score deductions, see e.g. paragraphs [0035], [0036], [0038], [0056], [0069] to [0075] of D1. It was displayed (claim 9 of D1) as also acknowledged by the opposition division.

The appellant pointed out that the wording of feature M1.6.6 only required that historic data were "computed from" the count of scoring event occurrences and associated score deductions for a plurality of past terminal days of the driver, and not that they were said counts and deductions themselves. The historic scorecard in D1 concerned "previous driving periods", see paragraph [0056].

2.1.9 In addition, the appellant noted that the respondent cited decision G 1/24 to prove the novelty of certain features present in the independent claims, based on some passages of the description.

G 1/24 stated that the description and drawings shall always be "consulted" when interpreting the claims. "Consulting" did not mean that a broad claim wording should be interpreted in a more limited way based on the content of the description. If this was the case, the scope of protection would eventually be defined more by the description and drawings rather than by the claims, contrary to all EPC provisions and to the real intention of this decision.

Moreover, the description passages cited by the respondent only referred to specific examples and embodiments. Therefore, evidently, they could not be used to interpret the claim wording throughout its entire scope of protection, since there was no actual basis in the description to do so.

For these reasons, the forced and limited interpretation suggested by the respondent should not be followed.

2.2 Respondent's position

2.2.1 The respondent took the view that features M1.6.2 to M1.6.6 were not disclosed in document D1, when reading claim 1 in its entirety.

2.2.2 The skilled person understood that the safe mode of operation according to feature M1.6.4 was a particular mode of operation of the display. The detailed disclosure contained sufficient examples, e.g. that the

safe mode was a mode of presenting a limited amount of scoring information. From paragraphs [0008], [0021], and [0031] of the opposed patent a skilled person clearly inferred that the safe mode of operation was associated with an operation mode of the vehicle itself, e.g. any operation mode other than parking.

2.2.3 The opposed patent referred to presenting a plurality of scores, see paragraphs [0008] and [0010]. Figure 2 of the patent gave ten examples of scoring parameters, lane departure was only one of them, while Figure 3 showed score deductions for each scoring parameter, which might be considered as "scores" as argued by the respondent during the oral proceedings before the board. While in Figure 5 only one score was displayed, there was disclosure of multiple scores in original claim 7.

2.2.4 In order to arrive at a correct interpretation of the claims, consulting the description and drawings of the opposed patent was necessary (G 1/24).

The respondent cited page 2, lines 10 to 15 of the description. The board understood that the passage on page 3, lines 10 to 15 of the application as originally filed was meant; it corresponds to column 2, lines 3 to 10 of the opposed patent and reads "Embodiments of the disclosure are directed to a system and method of monitoring for specified driving behaviors considered to be undesirable or unsafe, quantifying the magnitude of infractions or penalties due to undesirable or unsafe driving behaviors, computing a score for each of the specified driving behaviors that occur during a predetermined period of time, and computing a total driving score for the predetermined period of time".

Hence, in the appellant's view, the claims must be construed such that each of the plurality of scoring parameters was chosen "to enable scoring a specified driving behavior considered to be undesirable or unsafe". Moreover, the respondent argued that, in view of the description and drawings, the term "plurality of scores for a plurality of scoring parameters" must be understood "in that the plurality of scores matches the the plurality of scoring parameters". There was an "independent score" for each scoring parameter, see also paragraphs [0007], [0008] and [0013] of the opposed patent.

2.2.5 In contrast to the opposed patent, D1 proposed forming one single score from the plurality of sensor data, see Figures 10 and 11. Hence, for this reason alone, features M1.6.2, M1.6.3 and M1.6.4 were not known from D1. The multiple sensors of D1 provided data used to generate one single score, contrary to what was required by the wording of claim 1.

Monitoring of other scoring parameters beyond "lane keeping ability" was not disclosed in paragraphs [0013] [0033], [0059] of D1. All monitored driving behaviour could be subsumed under "lane keeping ability", as correctly assessed by the opposition division, see also paragraphs [0002], [0054] and [0056] of D1. All events detected in D1 were in relation with the lane detection performed by the lane detecting system and the "lane keeping ability", see also paragraph [0014] of D1. Other scoring parameters were not monitored.

Regarding the other sensors used in D1, paragraphs [0054] to [0056] and Figure 5 contained no disclosure on a scoring parameter beyond lane keeping ability. Figure 5 showed at least three additional classes of

behavioural sensors which might be used in conjunction with the lane sensor 121. Hence, the additional classes of behavioural sensors did not themselves relate to capturing events of erratic or poor driving according to other scoring parameters, but were used together with the lane sensor 121 as a single scoring parameter. The in-car audio sensor 122 could capture driving events of erratic or poor driving but did not provide data for another scoring parameter. Output from speed sensor unit 126 was employed to turn on event tracking and scoring ([0014]), and to determine whether lane changes were completed within a preset short length of time indicating dangerous driving (paragraph [0013]). It was not employed for another scoring parameter. Paragraphs [0054] to [0056] did not disclose that accelerometer 123 or sleep detector 124 would be employed for another scoring parameter, either.

The claimed system required to update the scores in real time during the driver's terminal day. In view of feature M1.6.3, the plurality of scores according to claim 1 were updated in substantially real-time. This meant in the language of D1, that a plurality of different scores "M" would have to be disclosed, which D1 failed to do. There was only only score "M" displayed in D1 (Figure 10, paragraph [71]).

Therefore, when consulting the description and drawings as necessary, the reading that elements "z" and "M" of D1 corresponded to the plurality of scores for said plurality of scoring parameters was excluded, because "z" and "M" were dependent on each other, as z was used to update M. Insofar, the opposition division's finding that D1 disclosed only one score was correct.

2.2.6 The respondent also argued that the value of z was a sum of events written in a user table after the end of a scoring interval in D1 (Figure 6), i.e. each 10 minutes according to paragraph [0058] of D1. As indicated in paragraph [0072], z is the "point value of the last event detected" and was calculated according to steps 376 and 359 in Figure 10 (using the number of events x in the scoring interval and the value LTV(i)).

It could not reasonably be said that the value of z was updated in real time as required by claim 1.

2.2.7 Neither the "visual alert" nor the arrow displayed in D1 could be considered as a score within the meaning of claim 1, contrary to what the appellant alleged.

The respondent also noted contradictions in D1 between the disclosure of paragraphs [0069] to [0073] and Figures 10 and 11 so that it was not clear what was displayed according to paragraph [0072].

2.2.8 The respondent also questioned whether the data displayed in D1 was indeed displayed to the driver, and not to the central office for reporting.

2.2.9 Regarding feature M1.6.5, displaying scoring event occurrences did not amount to displaying a count of scoring event occurrence for each scoring parameter. An "event" was not a scoring parameter. A skilled person understood that feature M1.6.5 amounted to displaying the count as a simultaneous display of a plurality of scoring occurrences. A sequential displaying was not covered by the claim.

Moreover, D1 contained no hint that the count of scoring event occurrences and associated score

deductions were displayed (only) at times other than during the safe mode of operation. Displaying steps 402 and 403 (Figure 11) in D1 were made during driving.

Step 414 in Figure 11 and paragraphs [0074] to [0076] mentioned a "latest event score", which was the point value of the last event detected (either z0 to z, see paragraph [0072]). According to Figure 10 of D1, z corresponded to a sum over point values of all events recorded in a scoring interval. It did not correspond to a count of scoring event occurrences (according to feature M1.6.5). D1 did not disclose that the number of events x (step 372 of Figure 10) would be displayed. Value x of Figure 10 of D1 was not displayed at all.

The respondent pointed out that D1 contained no hint on implementing a first type of display with reduced information during the safe mode of operation and a different, more detailed display screen at times other than during the safe mode of operation.

2.2.10 As to feature M1.6.6, the respondent argued that the disclosure of paragraphs [0074] and [0075] of D1 did not concern past terminal days.

2.3 Board's assessment

2.3.1 The board is convinced that D1 discloses features M1.1 to M1.6, M1.6.1 to M1.6.4 and M1.6.6, but does not disclose feature M1.6.5.

The subject-matter of claim 1 as granted is therefore new over the disclosure of D1.

2.3.2 It is undisputed that document D1 discloses features M1.1 to M1.6.1, i.e. in the wording of claim 1: a

system, comprising: an interface configured to receive vehicle data acquired by a computer system (Figure 1C, [0009], Figure 5, [0054] to [0057]) of a vehicle (Figure 1A); a wireless transceiver ([0057]) configured to effect communications with a central office ([0057], "third party monitoring system") via one or more networks; a display (Figure 1C, [0009], "display screen", Figure 5); memory ([0009], "data storage", Figure 5) configured to store scoring algorithms; and a processor ([0009], "processor", Figure 5) configured to receive at least some of the vehicle data (Figure 5).

In D1, this system is an integral part of a car, wherein the display and processing unit 8 is positioned within the cabin of the car, see paragraph [0035], so that information is displayed to the driver during driving, as it is the case in the opposed patent.

2.3.3 First, the board is of the view that some terms of claim 1 are to be interpreted in view of the wording of claim 1 and the disclosure of the opposed patent. The board also took into account the parties' submissions.

(a) "safe mode of operation" (feature M1.6.4)

The term "safe mode of operation" used in feature M1.6.4 relates to a period of time within the driver's terminal day as defined by feature M1.6.3., when the car is in operation. This includes the case when the vehicle is on and stopped at a traffic light or at a crossroad, as pointed out by the appellant. While not explicitly claimed, it is reasonable to assume - as did the respondent - that the safe mode of operation corresponds to an operating status of the vehicle "other than park".

(b) "at times other than during the safe mode of operation" (feature M1.6.5)

The wording of feature of feature M1.6.5 does not require that information is presented on the display within the driver's terminal day. Feature 1.6.5 only requires that said information is presented outside the "safe mode of operation".

(c) "a plurality of scoring parameters" (feature M1.6.2)

While the term "score" refers to a numerical value, the term "scoring parameter" only defines a category of events or driver's activities during driving that is monitored by the claimed system.

This is supported by the description of the opposed patent, see e.g. paragraph [0011] ("... *The scoring parameters are typically predetermined vehicle performance and/or driver behavior parameters which are monitored during the predetermined time of vehicle operation. Each of the scoring parameters is typically associated with a specified driving event which is to be monitored. When a specified driving event occurs, the scoring parameter or parameters associated with the specified driving event subject to monitoring are used as a basis for generating driver scores for the specified driving event. ...*").

As pointed out by the respondent, Figure 2 of the patent shows an example of ten scoring parameters ("Sudden Stops", "Sudden Starts", etc.), see also paragraph [0015] of the patent ("ten different scoring parameters").

A "scoring parameter" is thus a description of a driver's activity that (negatively or positively) affects a score. A scoring parameter is thus not more than a category of an activity or a type of events, see again paragraph [0011] of the patent ("Each of the scoring parameters is typically associated with a specified driving event which is to be monitored").

(d) "a plurality of scores for a plurality of scoring parameters" (feature M1.6.2)

A score is a numerical value that is calculated using algorithms and vehicle data, i.e. data that is obtained by monitoring the scoring parameters.

As shown in Figure 2 of the opposed patent, each of the ten scoring parameter has an associated number of "Points per Event" to be deducted in case the respective event occurs. During driving, the ten types of events are monitored and the number of events is counted as shown in Figure 3. Although not explicitly mentioned in paragraphs [0017] to [0019] of the opposed patent, the board understands that Figure 3 also indicates the number of points deducted for each type of event. For example, three "Over Speed" events result in a deduction of 6 points ("-6"), as one "Over Speed" event implies a deduction of two points in accordance with Figure 2 of the opposed patent. Moreover, Figure 3 also shows a current total driver score (in region 306 of the display).

The patent does not disclose that the screen of Figure 3 is shown in a "safe mode operation" (feature M1.6.4) while other data might be shown "at times other than during the safe mode of operation" (feature M1.6.5). It is thus debatable whether Figure 3 is an

embodiment of feature M1.6.4 and whether the point deductions are scores within the meaning of feature M1.6.4.

On the other hand, as explicitly mentioned in the patent, Figure 5 is a display shown in a "safe mode of operation", see paragraph [0021] of the patent ("*The in-cab scorecard screen 502 shown in Figure 5 is a representative embodiment of a 'safe mode' screen, which can be presented to the driver when the vehicle is in operation*").

As pointed out in paragraphs [0013] and [0014] of the patent, an initial total daily driver score of 100 points is established for the driver at the beginning of a driver's terminal day. Point deductions are calculated and the total daily driver score is reduced by the calculated point deductions. In the example of Figure 5 the driver score is 72, which means that the driver has lost 28 points from its initial 100 points.

Hence, as also pointed out by the parties, the driver's current score (Figure 5 of the opposed patent, region 510, "72") is a score within the meaning of feature M1.6.4. As shown in Figures 2, 3 and 5, this number is generated by taking into account all ten types of events, i.e. all ten "scoring parameters".

In view of these considerations and as pointed out by the appellant, there is no one-to-one correspondence between one of the "plurality of scores" and one of the "plurality of scoring parameters". The wording of claim 1 does not exclude a relationship or interdependency between two or more of the scores, either.

Therefore, any numerical value that is mathematically calculated (by algorithms, feature M1.6.2) using e.g. the count of occurrences of one or more types of events (i.e. the counts of occurrences for one or more "scoring parameters") is a "score" within the meaning of claim 1. One example is the current total driver score shown in region 510 of Figure 5.

However, for this reason the board concurs with the respondent that displaying a trending arrow or a visual alert does not correspond to displaying a "score".

(e) "generate, in substantially real-time and independently from the central office" (feature M1.6.2), "update, in substantially real-time and independently from the central office" (feature M1.6.3)

The board shares the appellant's view that the term "in substantially real-time" means that the generation and updating (features M1.6.2 and M1.6.3) is to be performed in regular time intervals (e.g. every 10 minutes), and not at the end to the terminal day.

It is undisputed that steps M1.6.2 and M1.6.3 are performed by the processor of the claimed system without any data transmission to or from the central office ("independently from the central office").

2.3.4 As pointed out by the opposition division, one scoring parameter used in D1 is the "lane keeping ability", e.g. the number of "events" when the driver drifts between lanes, see e.g. paragraphs [0013] and [0033]. However, other types of "events" of "erratic or poor driving", i.e. other "scoring parameters", are monitored (see paragraphs [0002], [0054] to [0056],

Figure 5, [0059], "Events are instances of poor or proper driving. For example, riding a lane line, straddling a lane line, multiple successive lane changes, and proper driving for a specific time interval detected by the sensors are all events. Events table 204 stores records of events as they are generated by the sensor system, one record for each event", Figure 8, "event_type 278").

Some of the sensors (e.g. the sleep detector 124 or the in car audio sensors) are not described to be foreseen to monitor events related to the lane keeping ability. They evidently serve a different purpose. In D1, different types of events are identified in an event table by the "event_type" entry and a lookup table 340 contains an "event points value (LTV)" according to the event type returned from the sensor system, see D1, paragraph [0066]. As pointed out by the appellant, providing different event points values (LTVs) would be meaningless in a system that monitored one single type of events (i.e. one single scoring parameter).

As an aside, the board notes that the event point values LTVs stored in lookup tables in D1 correspond to the "Points per Event" according to Figure 2 of the opposed patent.

The board thus shares the appellant's view that the multiple sensors shown in Figure 5 are used to monitor different driver's activity or types of events, which are not necessarily related to the "lane keeping ability". The processor of D1 therefore processes data related to a plurality of scoring parameters.

2.3.5 In its decision G 1/24, the Enlarged Board of Appeal clarified that the description always has to be

consulted to interpret the claims when assessing the patentability of an invention.

The present board agrees with T 1999/23 (Reasons 5.6 and 5.9) that the Enlarged Board otherwise referred to the principles developed by case law (G 1/24, Reasons 10. and 11.) and that one of these principles is that a restrictive definition of a term in the description may not be used to restrict the subject-matter of the claim, which is otherwise clearly broader for the skilled person, see Case Law of the Boards of Appeal, 11th edition, July 2025 (CLBA), II.A.6.3.4, T 1465/23, Reasons 2.4, T 0161/24, Reasons 4.5.2. This principle remains valid even after decision G 1/24, as the Enlarged Board emphasised that interpretation starts with and is based on the patent claims.

In the present case, the board has consulted the description and drawings in order to understand the claims in view of the parties' discrepant readings of their wording. The board does not concur with the respondent that, based on the description, the claims must be construed such that each of the plurality of scoring parameters is chosen so as to generate a score for specified driving behaviours considered to be undesirable or unsafe, that the plurality of scores "matches" the plurality of scoring parameters or that there was an "independent score" for each scoring parameter. Nothing in the wording of granted claim 1 would suggest that its subject-matter should be restricted in this way.

The board also notes that the appellant used the description to arrive at a more restrictive claim construction in order to support its view that the claimed system is not known from D1, but neglected

other passages that would not support his view. For example, the opposed patent discloses only an example with one single score (paragraph [0024], "driver's current score" 510, Figure 5) displayed during a safe mode of operation, as also pointed out by the appellant, while feature M1.6.4 of granted claim 1 requires at least two scores. This inconsistency was also noted by the appellant to base its objection under Article 100(b) EPC thereon. Interpreting feature M1.6.4 using this teaching from the description would possibly broaden the meaning of feature M1.6.4, as examples with exactly one score displayed during a safe mode of operation would also be encompassed. This would clearly not help the respondent's case when assessing novelty over a specific piece of prior art.

2.3.6 Turning back to D1, the board agrees with the appellant that Figures 9 to 11 of D1 concern different parts of the way the scoring system in D1 operates; Figures 6 and 8 are also relevant.

Figure 6 and paragraph [0058] define different time intervals used in D1. The series time intervals s1, s2, ... is defined from the time 215 that the car is turned on and exceeds a specific speed until the time 216 that the car is turned off. One or more of the series time intervals are considered to correspond to one driver's terminal day as defined by feature M1.6.3.

A scoring interval 211 (having e.g. a length of 10 minutes) corresponds to the time interval at the end of which the calculations of Figure 10 are performed (see Figure 9, steps 320 to 334, [0065] to [0069], Tables 2 to 4), step 333 being detailed Figure 10. In a given scoring interval events from sensors (Figure 5) are detected (320) and recorded in event tables (Figure 8,

Table 3 and 4, [0066], [0067]). Step 333 also includes the update of the user table (Figure 8, Tables 5 and 6, [0068] to [0071]), see Figure 10. For example, Table 6 indicates that x events were detected in the scoring interval j, which led to a subtraction of z points (x times the event point value LTV) from the number of points M (which was the number of points at the end of scoring interval j-1), see [0071].

Figure 11 discloses that data is displayed during the driver's terminal day (time between 401 and 408) or thereafter (414). Figure 11 also shows data stored in memory devices. A communication with a central office is not disclosed in the context of Figure 11 so that there can be no doubt that the information is shown to the driver by the display in the car.

2.3.7 As a consequence, in D1, corresponding "scores for said plurality of scoring parameters" are generated ("event scores", "number of event occurrences", [0056], Figure 8, "no_of_points_added 258", "no_of_points_subtracted 259", "no_of_points_current 260").

All these numerical values are calculated using the number of events x detected during event intervals of a scoring interval j (see Figure 6) in accordance with what is shown in step 333 of Figure 9 that is detailed in Figure 10 (e.g. steps 360 to 379 in case events were detected in a given scoring interval). As pointed out by the appellant, these data is stored in the memory.

From Figures 8 and 10, it is understood that scores 257, 258, 259, 260 are updated for each scoring interval (defined in Figure 6, [0058], "10 minutes"), see Figure 9, step 333, Figure 10. In particular, scores 259 ("z") and 260 ("M") are updated in steps 377

and 378, see Figure 10 and paragraph [0071]. As pointed out in point 2.3.3 (e) above, this corresponds to what is meant by the feature "in substantially real-time".

2.3.8 The numerical values generated in D1 are thus "scores" within the meaning of the board's understanding of this term.

Hence, the processor of D1 is configured to:

- generate, in substantially real-time and independently from the central office ([0011], [0035]), a plurality of scores ([0035], "event score", [0038], Figure 5, [0056], "current performance data 130", "event scores", "total score", "event point value z", Figure 8, "no_of_points_added 258", "number_of_points_subtracted 259, "no_of_points_current 260") for a plurality of scoring parameters using the stored scoring algorithms and the received vehicle data (Figure 5, [0055], data from sensors 122, 121, 126, 123, 124, [0059]); and
- update, in substantially real-time and independently from the central office ([0055], [0056], Figures 9 and 10, [0063] to [0071]), the plurality of scores ("event scores", "total score", "event point value z", Figure 8, "no_of_points_added 258", "number_of_points_subtracted 259, "no_of_points_current 260") during a predetermined period of time (Figure 11, steps 401 to steps 408, Figure 6, time interval 210 between 215 and 216, for example), wherein the predetermined period of time is defined by a driver's terminal day which is initiated at the driver's terminal start time and completed at the driver's terminal end time (Figures 6 and 11).

Therefore, D1 discloses features M1.6.2 and M1.6.3.

2.3.9 With respect to feature M1.6.4, the processor of D1 is configured to cooperate with the display to present the plurality of scores (Figure 11, steps 402, 403, "certain scores can be displayed", [0072]) on the display during a safe mode of operation (Figure 11, steps 401 to 406, [0072], "Step 402 displays the point value of the last event detected, either z0 (if points were added) or z (if points were subtracted). Step 403 displays the accumulated series score M_series, or total score, which is the value of the no_of_points_current field 260 in the most recent scoring interval record", Figure 5, 130, "CURRENT PERFORMANCE DATA").

The wording of the independent claims is not limited to any particular scoring algorithms or any type of "scores" or "scoring parameters". As the board considers elements "z" and "M" as "a plurality of scores for said plurality of scoring parameters", D1 discloses feature M1.6.4.

The board notes that score "M" displayed in step 403 of Figure 11 of D1 seems to correspond to the score displayed in the example shown in Figure 3 ("region 306") of the patent or to the single score shown in the example shown in Figure 5 ("region 510") of the patent.

2.3.10 In D1, the processor is configured to cooperate with the display to present a scorecard history computed from the count of scoring event occurrences and associated score deductions for a plurality of past terminal days of the driver (Figure 11, step 414, step 406, [0055], "historical performance display 132 and historical performance record 134", Figure 5).

As pointed out by the appellant, claim 1 leaves it open when the scorecard history is computed and displayed. In D1, according to Figure 11 it is presented at times other than during the safe mode of operation, i.e. after turning off the car in step 408.

D1 therefore also discloses feature M1.6.6.

2.3.11 With respect to feature M1.6.5, the processor of D1 is configured to cooperate with the display to present at times other than during the safe mode of operation further information data to the driver (Figure 11, step 414, [0074] to [0076]).

It is possible that said information data includes a count of scoring event occurrences during the driver's terminal day ([0075], "latest event score"), in case no additional event occurs after the latest event score. D1 does not disclose displaying associated score deductions for each scoring parameter during the driver's terminal day. In other words, D1 does not display items 258 and 259 shown in Figure 8 ("no_of_points_added", "no_of_points_subtracted", "z0", "z") at times other than during the safe mode of operation.

The system of D1 does not display the event points values (table 8, "lookup_table_point_value 279", LTV) for the events in a scoring interval (Figure 8, "events_in_score_interval 280") of a given event type, either. This data would apparently correspond to the data shown region 304 of Figure 3 of the patent.

The appellant argued that score deductions were displayed in step 402 of Figure 11 of D1. However, as shown in Figure 11, the display of said data is

performed during the safe mode of operation, contrary to what is required by feature M1.6.5, so that, in the board's view, step 402 in Figure 11 does not disclose feature M1.6.5.

The board is not convinced that the disclosure of paragraphs [0011] and [0012] would imply that data is presented to the user according to feature M1.6.5.

D1 does not disclose feature M1.6.5.

3. Main request - inventive step (Articles 100(a), 52(1), 56 EPC)

3.1 Appellant's position

3.1.1 The appellant argued that an inventive step based on the distinguishing features M1.6.2 to M1.6.6 identified by the opposition division should not be acknowledged.

3.1.2 According to claim 1, any mode in which the vehicle was operated could correspond to the safe mode of operation. Hence, the "additional information" ("count of scoring event occurrences", "associated score deductions") were not displayed to the driver whenever the vehicle was being operated, i.e. also when the driver was merely using the in-cab display without driving. The driver was then never presented with information to improve its driving behaviour. Moreover, the scorecard history, the count of event occurrences and the associated score deductions could be displayed at any time. For these reasons the alleged technical effect was not achieved.

Claim 1 did not define that less information was presented to the driver in the safe mode of operation

than in D1 or at times other than the safe mode of operation. This implied that claim 1 encompassed embodiments in which the alleged technical effect ("improvement of the driver's driving behaviour while reducing distraction of the driver during the safe mode of operation") was not achieved.

3.1.3 No technical effect could be derived from the alleged distinguishing features. They relate to cognitive data and should be disregarded when assessing inventive step. Reference was made to the Guidelines G-II, 3.6.3 and to T 1194/97.

In the present case, the displayed data did not directly control the operation of any physical device and did not comprise technical features of the device (i.e. were not intrinsically structured so as to be compatible with the technical requirements of a specific device). They merely related to information to be brought to the driver's attention in a user-friendly manner.

A technical effect was considered credibly achieved if the assistance to the user in performing a technical task was objectively, reliably and causally linked to the feature. This was not the case for the claimed subject-matter. In the present case the alleged effect depended on subjective interests or preferences of the user. The successful completion of the technical task could not be objectively, reliably and causally linked to the acquired information.

The patent clearly related to a computer-implemented invention so that the Guidelines G-II, 3.6.3 were applicable. The information displayed did not relate to an internal state of a technical system and did not

enable the user to properly operate the technical system, wherein the system was defined by the vehicle, the road and the other users, contrary to the what the opposition division held. The claimed system did not include the vehicle itself, the road or other users, but was defined by the claimed features.

3.1.4 The opposed patent did not mention any particular effect solved by the sole distinguishing feature M1.6.5 identified by the board.

3.1.5 In any case, the alleged distinguishing features M1.6.2 to M1.6.6 were obvious in view of the disclosure of D1 alone. D1 suggested to monitor several activities and thus made it obvious to consider several scoring parameters. All data was stored in memories, see paragraph [0074] and thus available for displaying. Displaying several parameters was more distracting than displaying only one parameter (as it was done in D1, according to the opposition division).

Paragraph [0002] of D1 referred to the need of improving the driver's behaviour without causing too many distractions. It would thus be obvious to display a count of scoring event occurrences and an associated score deduction during a safe mode of operation. The fact that said data were displayed as a feedback after the actual driving period did not automatically improve safety. This would depend on the type of person receiving it.

3.2 Respondent's position

3.2.1 The respondent argued that the disputed features of claim 1 did not relate to the presentation of cognitive data only relevant to a human user. There was no legal

basis for requiring a "unique and bi-directional relationship between the displaying of information and the driver's driving behaviour". Only an objective, reliable and causal link was necessary. In the present case, even "one single iteration" of the invention would statistically reduce driving errors. The displayed data related to a vehicle ride and thus to the internal conditions in a technical system composed of the vehicle, the road and other vehicles. The plurality of scores for a plurality of scoring parameters were based on vehicle data and thus reflected proper control of the vehicle.

3.2.2 The distinguishing features M1.6.4 to M1.6.6 identified by the opposition division thus provided a technical effect in the technical system in which the invention was intended to be used, see e.g. paragraph [0015] of the opposed patent.

When assessing technical effects of human-computer interaction, it was usually the case that the technical effects arose when considering the claimed system in the context of a larger technical system. For example, a claim for a novel human-machine interaction for controlling an industrial device included technical effects insofar as it assisted a user in controlling the industrial device. Such technical effects could be acknowledged irrespective of whether the industrial device was part of the claimed device or system or within the claim scope.

3.2.3 Features M1.6.4 to M1.6.6 guided the user to improve driving behaviour - at least in a long term - by providing an in-depth assessment when the system was not in the safe mode of operation. In the example of Figure 3 of the patent, the user was provided with

detailed information that his current total driver score of 72 was due to problems with lane departure, over speed events, and hours of service violations. In contrast, according to D1, such an in-depth review was not possible and also not suggested because only the latest event score, the total score, the average score, or the scoring trend (upward or downward arrow, see paragraph [0073 of D1]) were accessible when the vehicle was turned off (paragraph [0075] of D1).

The presented information also credibly assisted the driver because the information was presented on the same display as employed during the safe mode of operation, at times other than during the safe mode of operation, e.g. when the vehicle was parked. Hence, the information was presented to the driver while he was still in the driver's seat. In addition, the information was presented even before the data was communicated to the central office, because feature M1.6.3 required that updating was independent from the central office. Accordingly, the manner of presenting the count of scoring event occurrences and associated score deductions forced the driver to pay attention to the information.

Features M1.6.4 to M1.6.6 finally provided for a continued human-machine interaction process because the scoring proceeded through the driver's terminal day, which would typically involve several situations in which the safe mode of operation was applied, such that the count of scoring event occurrences and associated score deductions as currently updated was displayed at times other than during the safe mode of operation.

At the same time, the claimed invention avoided driver distraction, because during the safe mode of operation,

only the (updated, see feature M 1.6.3) plurality of scores were presented. In particular, the count of scoring event occurrences and associated score deductions were displayed only at times other than during the safe mode of operation. The additional information according to feature M1.6.5 was presented to the user "right after the terminal day is terminated".

3.2.4 The respondent also referred to decision T 0651/12, which held that avoiding driver distraction for improving driving safety was a technical effect. In the present case, in analogy, features M1.6.4 and M 1.6.5 supported a driver in improving driving behaviour using a plurality of scoring parameters.

Reference was also made to decision T 0505/18, which related to a claim involving the distinguishing feature of stopping output of an advertisement while a mobile wireless communications device was moving and was within a given distance of a road intersection. This was considered a continued and guided human-machine interaction, which avoided driver distraction and improved safety. In analogy, the claimed invention stopped output of the detailed information of count of scoring event occurrences and associated score deductions when the vehicle was not in the safe mode, and instead only displayed the scores.

3.2.5 The respondent also argued that the driver was aware that the scoring data would be sent to the central office sometime after his driving assignment, so that it was very unlikely that the driver would disregard the information. Reference was made to decision T 2035/11, which explained that even though the user might decide to ignore the route-guidance information,

this did not detract from the technical character of the navigation system as a technical tool to be used interactively in a technical process. Even though the user might decide to ignore the scoring information displayed according to features M 1.6.4 to M 1.6.6, this did not detract from the technical character of the scoring system as a technical tool to be used interactively in a technical process.

3.2.6 With respect to the obviousness of feature M1.6.2, D1 consistently generated one single score z in which data from all sensors were reflected. Monitoring several activities did not render obvious several scoring parameters.

3.2.7 The claimed invention achieved thus a technical effect by presenting detailed driver scoring information in a sufficiently detailed manner while at the same time minimizing distraction, i.e. by distinguishing between a safe mode display and a non-safe mode display.

Neither D1 nor any of the other cited prior art documents contained any hint towards such a distinction. More detailed scoring information was only available at times other than during the safe mode of operation.

An interpretation of claim 1 such that the wording of the claims did not exclude that the amount of information shown to the driver during the safe mode operation was higher than during the other times, was excluded when reading the claims in the context of the description and the drawings (G 1/24). Paragraph [0031] of the patent explained that while the vehicle was in motion, a subset of available scoring information was presented in the vehicle cabin so as not to unduly

distract the driver. Accordingly, a skilled person clearly interpreted the claims such that during the safe mode of operation only the plurality of (updated) scores, forming a subset of available scoring information, was displayed, and that the complementary count of scoring event occurrences and associated score deductions and the scorecard history were shown only when the system was not in the safe mode of operation.

3.3 The board holds that an inventive step cannot be acknowledged.

3.3.1 The board is not convinced that the technical effect of features M1.6.2 to M1.6.6 can be recognised as the improvement of the driver's driving behaviour while reducing distraction of the driver during the safe mode of operation.

3.3.2 It seems to the board that the respondent based its arguments partially on features that are not part of the claimed system.

3.3.3 First, the board notes that claim 1 is directed to a system having hardware components according to features M1.1 to M1.6 including a processor and a display, wherein the processor processes date according to features M1.6.1 to M1.6.3 and cooperates with the display to present information to a user according features 1.6. to M1.6.6. The claimed entity clearly does not include any vehicle or central office, let alone its environment such as a road.

It is however undisputed that the claimed system is to be used in vehicle (car, bus, etc.) and that the user is the vehicle's driver.

3.3.4 According to the wording of the independent claims, it is not excluded that the amount of information shown to the driver during the "safe mode of operation" is significantly higher than during other times, contrary to the respondent's argumentation.

For example, the wording of the claims does not require that the plurality of scores are only displayed during the "safe mode of operation" or that the "count of scoring event occurrences and associated score deductions" and the "scorecard history" were shown only when the system is not in a "safe mode of operation", e.g. when the car is not in operation and is parked.

As already pointed out above, G 1/24 states that the description and drawings must always be "consulted" when interpreting the claims. In the board's view, "consulting" does not mean that a broad claim wording inevitably must be interpreted in a more limited way based on the content of the description where the description alone might suggest a narrower interpretation. There is no indication in claim 1 that the amount of information presented to the driver during the safe mode of operation is reduced when compared to what is shown in D1 or to what is shown at times other than the safe mode of operation.

For this reason alone, it is questionable whether the claimed features M1.6.2 to M1.6.6 or distinguishing feature M1.6.5 alone would have any effect of reducing the driver's distraction.

3.3.5 Moreover, as already pointed out above, the wording of the independent claim is not limited to any particular scoring algorithms or any type of "scores" or "scoring parameters".

The wording of claim 1 does not restrict which information related to which "poor driving behaviour" is presented to the driver or in which format.

This is a further indication that the driver's distraction is not necessarily reduced when the plurality of scores are displayed and that no guaranteed improvement of the driver's behaviour in traffic is to be expected.

As a consequence, even under the assumption that a reduced amount of information is shown to the driver when the vehicle is in operation and additional information (count of scoring event occurrences, associated score deductions for each scoring parameter, scorecard history, etc.) is displayed when the vehicle is parked, the board shares the appellant's view that displaying this information to the driver would not necessarily affect the driving behaviour or produce a technical effect. The displayed data does not directly control the operation of any physical device (such as the claimed system or the vehicle) or assist the user in performing a technical task (i.e. operating the car). The information displayed may potentially have an effect in the mind of the driver who then possibly decides to somehow change its driving behaviour or to disregard the information. However, it cannot reasonably be said that the information presented credibly assists the driver/user in performing a technical task by means of a continued and/or guided human-machine interaction process.

The information presented according to feature M1.6.2 to M1.6.6 therefore concerns cognitive information.

3.3.6 Regarding the board of appeal decisions indicated by the respondent, the board is of the view that, contrary to the present case, specific and immediately used information (map data, an advertisement, navigation information) is shown (or not) to a driver when operating a car so that in those cases a guided human-machine interaction process may possibly be recognised, contrary to the present case.

3.3.7 Turning now specifically to the distinguishing feature identified by the board in section 2.3 above, namely feature M1.6.5, the board notes that the wording leaves it open whether information is shown within the driver's terminal day or not. Nothing in claim 1 suggest that displaying step M1.6.5 is performed immediately after the vehicle is turned off, at the end of the terminal day or shortly after the end of the terminal day. Claim 1 encompasses arrangements with the count of scoring event occurrences and the associated score deductions being displayed several hours or even days after the end of the driver's terminal end time.

Moreover, without specifying which type of activities (i.e. which the "scoring parameters") are monitored, it is unlikely that merely presenting "a count of scoring event occurrences and associated score deductions for each scoring parameter" e.g. two weeks after a driver's terminal day would have any measurable effect on the driver's future behaviour when operating a car.

3.3.8 As pointed out by the appellant, the patent is completely silent about any technical effect or any technical problem specifically solved by distinguishing feature M1.6.5. The respondent did not indicate any relevant passage in the patent, either.

3.3.9 In view of these considerations, the board is not convinced that the distinguishing feature improves a driver's driving behaviour while reducing distraction of the driver during the safe mode of operation.

Displaying said data during the driver's terminal day at times other than during the safe mode of operation, i.e. when the vehicle is parked, does not provide any technical effect, neither inside the claimed system nor outside. Feature M1.6.5 therefore requires not more that presenting cognitive information to a driver so that an inventive step based on feature M1.6.5 cannot be acknowledged.

3.3.10 According to established case law (G 1/19, T 0641/00), feature M1.6.5 can be used in the formulation of an objective technical problem, which is not more than to implement feature M1.6.5 in the system known from D1.

The skilled person using its common general knowledge has sufficient information for configuring the processor of D1 such as to perform the method step M1.6.5. The skilled person is aware of how to program a processor such that specific data is displayed during a specific period.

The data necessary to implement feature M1.6.5, i.e. the count of scoring event occurrences (D1, Figure 10, x) and the associated score deductions (D1, Figure 10, z) are available in the method of D1. The person skilled in the art confronted to the task of implementing feature M1.6.5 would have no difficulties to do so using normal programming skills.

Hence, the subject-matter of claim 1 does not involve an inventive step (Articles 52(1) and 56 EPC) over the

disclosure of D1 alone.

4. Auxiliary requests 1 to 3 - admittance under Article 12(3) and (5) RPBA

4.1 According to Article 12(3) RPBA, the statement of grounds of appeal and the reply must contain a party's complete appeal case. Accordingly, they must set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld.

According to Article 12(5) RPBA, the board has discretion not to admit any part of a submission by a party which does not meet the requirements in paragraph 3.

4.2 The appellant requests not to admit said auxiliary requests as they were never duly substantiated in written form, neither at their filing during opposition proceedings nor in the reply to the grounds of appeal. They were never discussed before the opposition division.

The respondent was aware of all the appellant’s objections presented in the grounds of appeal, as well as of the fact that such objections would equally apply to the auxiliary requests should the board take a different position than the opposition division on some of the substantial objections that had been raised. Therefore, the respondent could and should have presented any relevant argument, fact or evidence in its reply to the grounds of appeal, if it intended to ever rely on such requests in appeal.

The appellant also cited T 1220/21, T 0559/20 and

T 2202/21 to support its case.

4.3 In its reply to the statement setting out the grounds of appeal, the respondent stated that auxiliary request 1 was in response to item 2.2 of statement setting out the grounds of appeal (dealing with Article 100(b) EPC and feature M1.6.6). The additional amendments made in auxiliary request 2 addressed item 2.1 of said statement (dealing with Article 100(b) EPC and feature M1.6.4). The additional amendments made in auxiliary request 3 addressed item 1. of said statement (dealing with Article 100(c) EPC and granted claim 10). The respondent further provided a basis for amended feature $M1.6.6_{AR1}$ in the application as originally filed by referring to passages in the published version of the opposed patent.

In its letter dated 8 July 2024, the respondent did not address auxiliary requests 1 to 3.

In its letter dated 27 June 2025, the respondent argued that auxiliary requests 1 to 3 would have been admitted by the opposition division, had a decision on admittance been required. They were admissibly raised.

Providing an argumentation in the reply to the grounds of appeal why the claimed subject-matter involved an inventive step, however, would require anticipating argumentations on all aspects in which the board could possibly follow the appellant's submissions. This would be an undue burden and contrary to the principle of procedural economy. Auxiliary request 1 to 3 were relevant fallback positions. The respondent also provided arguments in support of an inventive step based on feature $M1.6.6_{AR1}$.

4.4 The board is of the view that the requirements of Article 12(3) RPBA are not met for auxiliary requests 1 to 3 and used its discretion under Article 12(5) RPBA not to admit said auxiliary requests into the appeal proceedings in view of the following considerations.

4.4.1 Auxiliary requests 1 to 3 had been filed on 30 August 2021 with the reply to the notice of opposition. As the opposition division decided to reject the opposition, auxiliary request 1 to 3 obviously do not correspond to requests on which the decision under appeal is based. It might be argued - as did the respondent during the appeal proceedings - that auxiliary requests 1 to 3 were admissibly raised and maintained in the proceedings leading to the decision so that they do not constitute an amendment to the respondents appeal case (Article 12(2) and (4) RPBA).

In this respect, the board notes that there is case law (see CLBA, V.A.4.2.2 c)(i), sixth to ninth paragraphs) stating that one condition requirement for a request to be admissibly raised is "that it had been made clear, explicitly or by way of unambiguous implication, for which purpose they were filed, i.e. which objections raised by the other party or the opposition division they tried to overcome and how this was actually achieved". In other words, one condition might well be that the request is properly substantiated when it is filed during the opposition proceedings. In view of pages 1 and 9 of the respondent's reply to the notice of opposition, as pointed out by the appellant, the board has doubts that this condition is met in the present case.

4.4.2 This question can however be left unanswered, because, even under the assumption that auxiliary requests 1 to

3 are not amendments within the meaning of Article 12(4) RPBA (because they were admissibly raised and maintained in the opposition proceedings) the respondent is still under the obligation to file written submissions which meet the requirements of Article 12(3) RPBA.

If a respondent requests to set aside a decision to reject an opposition and to grant a patent on the basis of an auxiliary request, it must set out in its reply to the appeal clearly and concisely the reasons why it is requested that the decision under appeal be amended or upheld, and has to specify expressly all the requests, facts, objections, arguments and evidence relied on, even if said auxiliary request was filed during the opposition proceedings and was never dealt with by an opposition division, as it is the case here. A mere reference to submissions made during the opposition proceedings is generally not sufficient, either, see CLBA, V.A.4.3.5 a), fifth to seventh paragraphs, b), ii) third paragraph, iii)).

A statement that auxiliary requests 1 to 3 were maintained and were in response to certain issues raised by the appellant without providing further details is not sufficient.

In the present case, the respondent did not provide any reason why the decision under appeal should be amended on the basis of auxiliary requests 1 to 3, in case the board shared the appellant's view on the main request, e.g. in case the board concurred with the appellant on the issue of lack of inventive step regarding the claims as granted. The respondent did not even refer to its submissions made during the opposition proceedings. No details at all were given why the amendments made in

the auxiliary requests 1 to 3 were not known from D1, which technical problems they possibly solved by providing technical effects and why their implementation would not be obvious for the skilled person in view of D1.

In other words, reading the reply to the statement setting out the grounds of appeal, the board would only be in a position to guess why an inventive step should be acknowledged on the basis of the amendments made to claim 1 of the auxiliary requests 1 to 3.

Providing short explanations in the letter dated 27 June 2025 (i.e. one month prior to the oral proceedings before the board) cannot heal the matter missing in the respondent's reply to the statement setting out the grounds of appeal.

Auxiliary requests 1 to 3 therefore do not meet the conditions mentioned in Article 12(3) RPBA and are not admitted by the board in accordance with Article 12(5) RPBA.

5. Auxiliary requests 2B and 1A - admittance

5.1 The appellant requested not to admit all auxiliary requests filed with the reply to the statement setting out the grounds of appeal, because they did not overcome the objections raised in the statement setting out the grounds of appeal and raised new objections. Reference was made to Article 12(2), (4) and (6) RPBA.

The appellant also objected that auxiliary requests were not duly substantiated in time with respect to at least the objection under Article 56 EPC.

5.2 In its reply to the statement setting out the grounds of appeal, the respondent stated *inter alia* that auxiliary request 2B and former auxiliary request 1A (filed with this reply) were filed "as a matter of precaution" and were "occasioned by a Ground of Opposition under Article 100 EPC". Former auxiliary request 1A further defined the "safe mode of operations" and addressed items 2.1 and 3.2.1 in said statement. Auxiliary request 2B introduced amendments to address item 3.2.3 of said statement by defining that the system related to an in-cab computing device.

In its letter dated 8 July 2024, the respondent added that the amendments made to the auxiliary requests merely clarified features already implied by the claims as granted. A basis for the amendments was also indicated. Regarding former auxiliary request 1A, the respondent stated that it addressed *inter alia* items 3.2.2 and 3.2.4 of the statement setting out the grounds of appeal and mentioned the technical effect of improving driving behaviour feedback at low risk of distraction. Regarding auxiliary request 2B, the respondent merely referred to the arguments submitted for the claims as granted.

In its letter dated 27 June 2025 the respondent filed auxiliary request 1A, which differed from former auxiliary request 1A merely in that method claims 10 to 14 were deleted, and argued that the deletion of the method claims did not represent an amendment to its appeal case within the meaning of Article 13 RPBA. It was further argued that auxiliary request 2B and 1A addressed the issue of lack of technical effect and provided additional arguments in support of an inventive step.

5.3 The auxiliary requests filed with the reply to the statement setting out the grounds of appeal evidently constitute amendments to the respondent's appeal case within the meaning of Article 12(4) RPBA.

Similarly as for auxiliary request 1 to 3, the respondent did not provide any reasons in the reply to the statement setting out the grounds of appeal why the amendments made to auxiliary requests 2B and 1A overcame the objection of lack of inventive step (Articles 100(a), 52(1) and 56 EPC) raised by the appellant against claim 1 as granted. The requirements of Article 12(3) RPBA are thus not met.

One could take the position that, for auxiliary request 2B and former auxiliary request 1A, the effective date on which these requests are actually filed, is not the date on which they were received at the EPO, but the date on which the relevant substantiation has been submitted. This could possibly be the respondent's letters dated 8 June 2024 or 27 June 2025. Furthermore, even though auxiliary request 1A differs from former auxiliary request 1A merely in the deletion of the method claims its effective filing date could be considered 27 June 2025. However, the filing of auxiliary requests 2B and 1A and their substantiation would then still have to be considered late and subject to Articles 13(1) and 13(2) RPBA. Explanations would still be missing why these auxiliary requests were not substantiated in due time.

In view of these considerations, the board used its discretion under Articles 12(5) and 13(1), (2) RPBA not to admit said auxiliary requests into the appeal proceedings.

6. Since the ground for opposition under Article 100(a) EPC in combination with Articles 52(1) and 56 EPC prejudices the maintenance of the patent and since the auxiliary requests 1 to 3, 2B and 1A are not admitted into the appeal proceedings under Articles 12(3) and (5) RPBA, the decision under appeal must be set aside that the patent must be revoked.

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:

S. Sánchez Chiquero T. Häusser

Decision electronically authenticated