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Aktenzeichen / Case Number / N<sup>o</sup> du recours : T 130/82

Anmeldenummer / Filing No / N<sup>o</sup> de la demande : 79302765.7

Publikations-Nr. / Publication No / N<sup>o</sup> de la publication : 0012554

Bezeichnung der Erfindung:

Title of invention: Line follower vehicle with scanning head

Titre de l'invention:

### ENTSCHEIDUNG / DECISION

vom / of / du 26 August 1983

Anmelder / Applicant / Demandeur : Bell & Howell Company

Stichwort / Headword / Référence : Vehicle Guidance System

EPO / EPC / CBE Arts.84,108; Art.9(1) Rules relating to Fees

"Appeal fee - overlooking insufficiency of amount paid"

#### Leitsatz / Headnote / Sommaire

A notice of appeal can be considered as having been filed within the time limit prescribed by Article 108 EPC, notwithstanding that the full amount of the appeal fee has not been paid within that period, if the amount unpaid can fairly be considered to be small, within the meaning of Article 9(1) Rules relating to Fees, and if the circumstances justify overlooking the amount lacking.



Case Number: T 130 / 82

**DECISION**

**of the Technical Board of Appeal 3.2.1**

**of 26 August 1983**

**Appellant:** Bell & Howell Company  
7100 McCormick Boulevard  
Chicago Illinois 60645  
USA

**Representative:** Miller, Joseph  
J. Miller & Co.  
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**Decision under appeal:** Decision of Examining Division 079 of the European Patent  
Office dated 19 April 1982 refusing European patent  
application No 79302765.7 pursuant to Article 97(1)  
EPC

**Composition of the Board:**

Chairman: G. Andersson

Member: C. Maus

Member: P. Ford

## Summary of Facts and Submissions

I. European patent application No. 79 302 765.7, filed on 3 December 1979, published under No. 0 012 554 and claiming the priority of a previous application of 6 December 1978, was refused by the decision of the Examining Division 079 dated 19 April 1982.

~~The decision was based on Claims 1 to 13 received on 8 February 1982.~~

II. In its decision, the Examining Division held that Claim 1 was not allowable for lack of support by the description (Article 84 EPC).

III. The appellants lodged an appeal against this decision on 12 June 1982 and relying on inaccurate information in a table of fees published by the EPO, they had paid £141 as the fee for appeal on 10 June 1982. Having been informed that the correct amount of the appeal fee had been £157 since 1 November 1981, the appellants made good the deficit on 1 July 1982. The statement setting out the Grounds of Appeal was received on 20 August 1982.

The appellants asked that they should be allowed to substitute for Claims 1 to 13, received on 8 February 1982, new Claims 1 to 14 annexed to the statement setting out the Grounds of Appeal. They also requested reimbursement of the appeal fee.

IV. In a communication dated 7 March 1983, the appellants were notified that the content of the new Claim 1 appeared to be sufficiently supported by the description. However, it appeared that the wording of that claim should be clarified. The new Claims 11 and 14 were not considered to be allowable as independent claims.

- V. By letter of 4 May 1983 received on 5 May 1983, the appellants submitted new Claims 1 to 11. Former Claims 11, 12 and 14 had been deleted. The appellants requested that the decision under appeal be set aside and that their application should be allowed to proceed on the basis of these claims.

~~Claim 1 reads as follows:~~

1. A system for automatically guiding a vehicle (20) wherein a guide line (28) having a finite width is positioned in a predetermined path on the floor (29) and wherein the vehicle (20) has scanning means (38) for scanning across the guide line (28), for sensing the intensity of light received therefrom to determine the position of the guide line with respect to the vehicle (20), and for generating an intelligence signal representative of the position of the vehicle with respect to the guide line (28), and control means (46,42) for steering the vehicle (20) responsive to the intelligence signal generated by the scanning means (38) so as to maintain a given position of the vehicle (20) with respect to the guide line (28) as the vehicle (20) moves therealong, characterised in that the scanning means is arranged to produce an output signal having first and second components representative of the intensity of light received thereby from the guide line at discrete positions in the scan representative of the right and left edges of the guide line, and includes means (74) for employing the first and second components of the output signal to detect the position of the vehicle (20) with respect to the right and left edges of the guide line (28) and for generating the intelligence signal representative of the position of the vehicle with respect to the guide line."

- VI. For the wording of the original claims and description, reference may be made to the application as published under No. 0 012 554.

Reasons for the decision

1. The appeal is considered to comply with Articles 106 to 108 and Rule 64 EPC and, therefore, to be admissible, notwithstanding the fact that the full amount of the appeal fee was not paid until after the time for appeal had elapsed. In principle, a time limit for payment of a fee shall be deemed to have been observed only if the full amount of the fee has been paid in due time (Article 9(1), Rules relating to Fees). However, that Article permits the European Patent Office "where this is considered justified", to overlook any small amounts lacking, without prejudice to the rights of the person making the payment. The amount of the underpayment in the present case was £16 in relation to a total fee of £157. This may fairly be considered to be a small amount within the meaning of the Article and, since the reason for the underpayment was reliance in good faith on inaccurate information published by the Office, it is considered justified to overlook the amount lacking at the date of expiry of the time limit for paying the appeal fee and filing the appeal.
  
2. The reason given for the refusal of the application was that Claim 1, submitted on 8 February 1982, was not supported by the description. It is, therefore, necessary to examine whether or not new Claim 1 meets this requirement of the Convention.

- 2.1 Apart from clarifications, this claim differs from Claim 1 on which the decision under appeal was based in its substantive content inasmuch as it is now specified in the characterising portion that the means (reference sign 74) employ the first and second components of the output signal of the scanning means to detect the position of the vehicle with respect to the right and left edges of the guide line. This feature is disclosed on ~~pages 17 and 18 of the description in combination with figures 14 and 15 of the drawing.~~ The third component of the output signal included in Claim 1, as received on 8 February 1982, is not required to detect the position of the vehicle in the specified method. It is, therefore, permissible to omit this component from the claim.
- 2.2 Despite the amendment, the characterising portion of present Claim 1 comprises, like the corresponding part of the Claim 1 on which the decision was based, two features which are defined in detail by the function they have to accomplish when automatically guiding the vehicle. For each feature, only one example is given in the description.
- 2.3 The Examining Division held that there appeared to be no obvious alternative to the method of detecting the two edges of the guide line disclosed in the description. It considered, therefore, that it was indispensable to include as features in Claim 1 a digital data table stored to each scan and a converter to generate the data table from the scanner output.
- 2.4 The answer to the question as to whether or not this is necessary, i.e. as to whether it is permissible to generalise the examples for every feature to the extent

shown in Claim 1, depends on the knowledge of the skilled person. In the present case, the competent person skilled in the art is the skilled person for automation. Reading the description of the example of the system according to Claim 1, represented in the drawings, this person would immediately realise that other methods which were known before the date of priority could be used for generating the output signal having ~~two components for detecting the position of the~~ vehicle with respect to the right and left edges of the guide line. It follows that it is not justified to require the appellants to restrict the claim to the specific example of every feature under discussion. On the contrary, the generalisations of the specific features of the examples to the extent shown in present Claim 1 are permissible.

- 2.5 Claim 1 meets therefore, the requirements of Article 84 EPC.
3. The appellants have deleted independent Claims 11 and 14, received on 5 May 1983. Consequently, their allowability need not be considered.
4. The Examining Division has not yet examined whether or not a system according to Claim 1 is patentable. Under these circumstances, the Board deems it not appropriate to decide this issue, but makes use of the power, given to it by Article 111(1) EPC, to remit the case to the Examining Division for further prosecution.
5. The appellants have shown no cause for the requested reimbursement of appeal fee. The Board cannot find a substantial procedural violation by reason of which the reimbursement would be equitable.

Order

For these reasons,

it is decided that:

1. The decision under appeal is set aside.

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2. The case is remitted to the Examining Division for further prosecution.
3. The request to reimburse the appeal fee is dismissed.

The Registrar:

signed: J. Ruckerl

The Chairman:

signed: G. Andersson