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**D E C I S I O N**  
**of 26 May 1998**

**Case Number:** T 0486/96 - 3.2.1

**Application Number:** 90106737.1

**Publication Number:** 0392411

**IPC:** B60R 25/00

**Language of the proceedings:** EN

**Title of invention:**

A control apparatus for automobiles

**Patentee:**

Hitachi, Ltd.

**Opponent:**

Mannesmann VDO AG

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 54, 56

**Keyword:**

"Novelty (yes)"

"Inventive step (yes)"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 0486/96 - 3.2.1

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.1**  
**of 26 May 1998**

**Appellant:** Mannesmann VDO AG  
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**Representative:** Zmyj, Erwin, Dipl.-Ing., Dipl.-Wirtsch.-Ing.  
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**Respondent:** Hitachi, Ltd.  
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**Representative:** Beetz & Partner  
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**Decision under appeal:** Interlocutory decision of the Opposition Division  
of the European Patent Office posted 1 April 1996  
concerning maintenance of European patent  
No. 0 392 411 in amended form.

**Composition of the Board:**

**Chairman:** F. A. Gumbel  
**Members:** P. Alting van Geusau  
V. Di Cerbo

## Summary of Facts and Submissions

- I. The mention of the grant of European patent No. 0 392 411 in respect of European patent application No. 90 106 737.1, filed on 9 April 1990 and claiming priority from the Japanese application JP 92863/89 filed on 14 April 1989, was published on 2 March 1994 (cf. Bulletin 94/09).
- II. Notice of opposition was filed on 24 November 1994 on the grounds of Article 100(a) EPC. In respect of an alleged lack of novelty and inventive step the opposition was supported in particular by the documents:
- D3: DE-A-3 308 803,
- D4: US-A-4 072 850.
- III. By a decision announced at oral proceedings on 6 March 1996 and issued in writing on 1 April 1996, the Opposition Division maintained the patent in amended form. In the Opposition Division's opinion the subject-matter in accordance with claim 1 as filed during the oral proceedings was novel. Furthermore, since the cited prior art did neither address the problem of enabling the driver to use different automobiles while maintaining the drive characteristics or accessories settings as selected or prepared in one vehicle, nor hinted at the solution claimed, the subject-matter of claim 1 was considered to involve an inventive activity.

IV. On 24 May 1996 the appellants (opponents) filed a notice of appeal against the above decision and paid the appeal fee on the same day.

The statement of grounds of appeal was filed on 7 August 1996.

V. In a communication for preparation of oral proceedings the Board expressed the preliminary opinion that D3 appeared to represent the closest prior art and that an important issue to be discussed at the oral proceedings was the question whether claims 20 and 21 of D3 disclosed or hinted at an embodiment in which the card reader in the vehicle was also adapted to write on the portable medium selected driving conditions and whether such disclosure would take away the novelty of the subject-matter of claim 1.

It was noted that in respect of the issue of inventive step the appellant also relied on D4. When starting from the closest prior art as represented by D3, it should further be discussed for what reason the skilled person would combine the card reader and tape read/write functions known from D4 in a single card read/write unit and use such combination in the control disclosed in D3.

VI. With letter dated 27 April 1998 the respondent filed new claims 1 in accordance with auxiliary requests I to III.

VII. Oral proceedings were held on 26 May 1998.

The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

In the course of the oral proceedings the respondent filed an amended claim 1 and an adapted description.

The respondent requested that the appeal be dismissed and that the patent be maintained in amended form on the basis of claim 1 and the description filed at the oral proceedings, together with claims 2 to 9 according to the interlocutory decision, and the drawings as granted. In the alternative the respondent requested maintenance of the patent in amended form on the basis of the claims 1 in accordance with the auxiliary requests I to III filed with letter of 27 April 1998.

VIII. Claim 1 of the respondent's main request reads as follows:

"1. A control apparatus for an automobile comprising a microprocessor control system for executing predetermined processing to control the operation of various devices and accessories (19, 21, 23, 25, 27, 29, 31, 33, 35, 37) installed in the automobile, said microprocessor comprises a system manager (1), including a central processing unit (3) and a memory (5) coupled with each other for initiating and managing the operation of units for controlling and operating the various devices and accessories (19, 21, 23, 25, 27, 29, 31, 33, 35, 37) and means for identifying a user of the automobile on the basis of an inputted

information,  
said identifying means includes an information read unit (13), coupled to said system manager (1), in which a portable recording medium with information recorded thereon is inserted, whereby, in response to the insertion of said recording medium, said system manager (1) executes a checking program stored in the memory (5) on the basis of the information recorded on the recording medium to check the validity and the correct use of the recording medium inserted and initiates the execution of a program stored in the memory (5) for the controlling and operating units, only when the inserted recording medium is judged to be valid and correct by the execution of said checking program, characterised in that the information read unit (13) is adapted to record on the portable recording medium specifications of control units selected by a user."

IX. In support of its request the appellant essentially relied on the following submissions:

The disclosure of D3 should be interpreted in a general manner and not, as was done by the respondent, restricted to relate only to a system in which an identity card is used as means for limiting the free use of a vehicle. Rather the object of D3 was also related to the improvement of driver's comfort and having that in mind the subject-matter of claims 20 and 21 should be interpreted to disclose that selected driving-conditions of the vehicle were storable on the identity card by the use of the keyboard available in the vehicle. Furthermore, since claim 21 was referring back to claim 20 only, claims 20 and 21 should be read

in combination and no other conclusion could be drawn than that the driving conditions selected by means of the keyboard in the vehicle and transferred to the Start- Managing and Control unit ("SBK" unit) were transferred from the memory of that unit to the identity card. Therefore it was implicit to the skilled person that the card-reader disclosed in D3 had also card writing abilities. In this respect also the corresponding part of the description on page 13, second paragraph, did not give any reason for a different interpretation of the subject-matter of claims 20 and 21.

Since the preamble of claim 1 was based on D3 and the characterising features were known from the same document, the apparatus in accordance with claim 1 of the main request lacked novelty. The same consideration applied to the apparatus known from D4 which should also be considered a novelty destroying prior art document.

In case novelty should be acknowledged the subject matter lacked an inventive activity when having regard to D3 and D4. D4 clearly disclosed that selected data were stored in the vehicle on a portable data carrier and it would not need any inventive activity to use the identity card, both known from D3 and D4 as the portable recording medium for the user's personal settings.

- X. The respondents disputed the appellants' views and argued substantially as follows:

Although in D3 claim 21 referred back to claim 20 such referral could not be construed in the present case to imply that the identity card was provided with information by the card reader mounted in the vehicle interior. Claim 20 was rather specific in stating that the SBK unit was programmable by means of the keyboard in the car. However, since nothing in this prior art document indicated that the card reader was also a card writing unit and the whole of the disclosure of D3 concerned a limitation of freely selectable driving conditions by using a preprogrammed identity card as an information storage member for the selected limiting units of the driving conditions no implication of a read/write unit could possibly be considered by the skilled person to form part of the disclosure of D3. Novelty should therefore be acknowledged.

The system disclosed in D3 did not address the problem of storing selected units on a portable data carrier so as to enable the user to enjoy the selected drive characteristics even when he uses an other automobile but rather used the data card as a means for limiting the free use of a vehicle. Therefore D3 could not be regarded to give a suggestion in the direction of the subject-matter claimed. D4, also relied upon by the appellant, concerned a fully different system in which a read/write unit was present but in which unit the storage of data was intended for monitoring use and not the slightest hint was given to store specific driving conditions selected by a user. Therefore even a combination of the teachings of D3 and D4 did not lead to the apparatus claimed in claim 1 of the main request.

## Reasons for the Decision

1. The appeal is admissible
2. *Amendments (main request)*
  - 2.1 Claim 1 is based on the granted claim 1, forming the precharacterising part of claim 1, and features of the granted claim 6. Its subject matter is disclosed in the originally filed application documents in claims 1, 2, 7 and 8 as well as in relation to the control sequence shown in the flow charts of Figure 4a and 4b as further explained on page 16, line 23 to page 20, line 2.

The independent claims 2 to 9 are based on claims 3 to 4, 7 and 9 to 12 as originally filed and on the granted claims 2 to 5 and 6 to 10, respectively.

In view of these assessments no objections in respect of the requirements of Article 123(2) and (3) EPC arise against the new set of claims.

- 2.2 The description was amended to take account of the subject-matter now claimed and further includes some clerical corrections and a reference to the closest prior art document D3. These amendments do also not give rise to objections under the EPC.
3. *Novelty (main request)*

3.1 The Board and parties are in agreement that the control apparatus disclosed in D3 represents the closest prior art and in fact the features of the precharacterising part of claim 1 are related to this known control apparatus.

3.2 The issue of novelty essentially concerns the question whether the control apparatus disclosed in D3 incorporates an information writing unit in the vehicle so that the user can record on the portable recording medium the selected specifications of control units.

It is undisputed that D3 does not explicitly disclose that the card reader is also adapted to write information on the identity card in the vehicle. However, the appellant was of the opinion that, when having regard in particular to claims 20 and 21 and the general knowledge of the skilled person, writing of selected vehicle driving conditions on the portable recording medium, which was in the form of an identity card, in the vehicle by the user was clearly implied and was also not in contradiction with the technical content of D3.

The Board observes that in accordance with the dependent claim 20 different driving conditions may be programmed into the "SBK" unit (start- managing- and control unit) by means of a keyboard which is present in the vehicle. Considering the general configuration of the "SBK" unit disclosed in D3, it is considered to be apparent to the skilled person that a user of the vehicle is allowed to store specifications of control units in the "SBK" unit's memory so that these specifications are used in the control of the vehicle. Such interpretation is fully in line with the explanations given in the description of D3, in particular those on page 13, second paragraph and the first four lines of the third paragraph.

Dependent claim 21, referring back to claim 20 only, simply states that the driving conditions can also be programmed on the portable recording medium. The appellant interpreted this information to mean that the driving conditions programmed into the "SBK" unit's memory could thus also be stored on the portable recording medium, i.e. the identity card and consequently the card reader was apparently adapted to write that information on the identity card.

However, when scrutinizing D3 for support of such an interpretation, in accordance with the disclosure of the description of D3 the possibility for programming of the identity card is limited to the use of programming tools which are available to the manufacturer of the identity card, officials of a vehicle registration authority or vehicle renting companies with a view to restrict the free use of the

vehicle by limiting the extent of certain driving conditions. Such programming excludes the use of the "SBK" unit of the vehicle itself as a programming means for the identity card by the car user.

Moreover, having regard to Figure 3 which discloses the principal configuration of the "SBK" unit and the detailed description of the functioning of the "SBK" unit, the information on the identity card is transferred from the "card reader" to the CPU unit (see the arrow **from** block 5 **to** the CPU block in Figure 3) but no indication whatsoever is derivable that the "card reader" is also intended to write information on the identity card.

In this connection attention can be drawn to the system disclosed in D4, in which system also a card reader without writing abilities is used in combination with a tape read/write unit for the bi-directional data-transfer.

Therefore in the absence of any disclosure or suggestion that data programmed and stored into the "SBK" unit by means of the keyboard can be transferred to the identity card by writing on it, the subject-matter of the combination of claims 1, 20 and 21 of D3 can only be interpreted to mean that in addition to the identity data for allowing the use of the vehicle, some driving condition data can be pre-programmed (externally) on the identity card to provide specific restrictions on the free use of the vehicle in respect of limits of driving conditions during driving (see also the abstract of D3). The same background idea of

predetermined protection can be derived from the second part of the third paragraph on page 13 of D3, which obviously relates to the subject-matter of claim 21.

3.3 The appellant also submitted that D4 would take away the novelty of the subject-matter of claim 1 when considering the magnetic tape read/write unit to be the portable recording medium. However, the appellant admitted that the magnetic tape did not contain the identifying information specified in claim 1. Moreover, the information written on the magnetic tape is not related to specifications of control units selected by a user. Therefore the appellants allegations are not supported by the facts and thus cannot be followed.

3.4 Since also none of the other documents cited in the opposition proceedings but not longer relied upon in the appeal proceedings discloses a control apparatus in accordance with the preamble of claim 1 having an information read unit for a portable recording medium that is adapted to write on the portable recording medium specifications of control units selected by a user, novelty of the subject-matter of claim 1 is concluded.

4. *Inventive step (main request)*

4.1 Starting from the closest prior art control apparatus in accordance with D3, the objective problem underlying the patent in suit is to be seen in a further improvement of the driving comfort of a vehicle by allowing the driver to always enjoy the same driving characteristics and vehicle accessories by using the

portable recording medium (see column 1, line 57 to column 2, line 6 of the amended patent specification).

4.2 This problem is solved by the apparatus in accordance with claim 1, and in particular in that the vehicle user can record on the portable recording medium specifications of selected control units so that each time the user inserts the portable recording medium in a vehicle the driving characteristics and accessory settings are brought in conformity with the user's personal preferences on the portable recording medium.

4.3 As follows from the considerations in respect of novelty, none of the cited documents discloses a control apparatus for an automobile in which personal settings of driving conditions and/or accessories are recorded on a portable recording medium by the automobile user so that he always enjoys the same drive characteristics and accessory settings by using the portable recording medium.

4.4 The apparatus disclosed in D3 cannot be seen to suggest writing of such specific information on the identity card because it does not address the comfort issue in respect of enabling the use of different vehicles with the same personal drive characteristics and does not disclose or imply that the user can write information on the card. The same is true for D4 in which arrangement the information written on the tape is not related to personal settings but rather concerns monitoring information.

4.5 Summarising, in the Board's judgment, the proposed

solution to the technical problem underlying the invention as defined in claim 1 comprises an inventive step and therefore this claim as well as its dependent claims 2 to 9, relating to particular embodiments of the invention in accordance with Rule 29(3) EPC are acceptable.

5. Since the main request is allowed there is no need to consider the auxiliary requests.

## **Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent with the following documents:
  - claims 1 and description filed at the oral proceedings held on 26 May 1998
  - claims 2 to 9 according to the interlocutory decision and
  - drawings as granted.

Registrar:

The Chairman:

S. Fabiani

F. Gumbel