Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Central Division

Paris Seat

DECISION
of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
delivered on 16 September 2024
on the generic procedural application No. App_5975/2024
in the revocation action ACT_585518/2023
UPC_CFI_412/2023

HEADNOTES:

1. Pursuant to Rule 355 'RoP' a decision by default against the defendant may be given where: i) the relevant request is submitted by the claimant; ii) the defendant fails to take a step within the time limit foreseen in the Rules of Procedure or set by the Court, or the party which was duly summoned fails to appear at an oral hearing, or the time limit for the defence to the claim has expired and thus, it is established that the service of the claim was effected in sufficient time to enable the defendant to enter a defence; and iii) the facts put forward by the claimant justify the remedy sought and the procedural conduct of the defendant does not preclude to give such decision.
2. Following the conditions set out in Rule 335 'RoP', it is at the discretion of the Court whether to issue a decision by default or not. In carrying out this assessment, the Court has to consider that expeditious decisions are one of the aims of the Unified Patent Court Agreement and that the legal framework of the 'UPC' provides the defendant with appropriate tools to provide justification for the default and to appeal the decision where unfavourable.

KEYWORDS: decision by default.

CLAIMANT:

Bayerische Motoren Werke Aktiengesellschaft - Petuelring 130, 80809 München, Germany

represented by Johannes Lang, Bardehle Pagenberg Partnerschaft mbB

DEFENDANT:

ITCiCo Spain S.L. - C/Pau Piferrer 17, 07011, Palma de Mallorca, Spain

represented by Robin Hayes, Whitney Moore LLP

PATENT AT ISSUE:

European patent n° EP 2 796 333

PANEL:

Panel 2:

Paolo Catallozzi	Presiding judge and judge-rapporteur
Tatyana Zhilova	Legally qualified judge
Dörte Otten-Dünnweber	Technically qualified judge

INDICATION OF THE CLAIM, ORDER OF REMEDY SOUGHT BY THE PARTIES

The claimant requested that the Court render a decision by default, pursuant to Rule 355 of the Rules of Procedure (hereinafter, 'RoP'), and, therefore: i) revoke the European Patent 2 796 333 B1 in its entirety for the territory of the Unified Patent Court member states in which that patent is in force; ii) order that the defendant bear the costs of the proceedings; and iii) put the defendant on notice accordingly pursuant to Rule 356 (3) 'RoP'.

The defendant did not submit any request.

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. On 6 November 2023 Bayerische Motoren Werke Aktiengesellschaft filed a revocation action against ITCico Spain SL concerning the patent at issue (EP '333) before this Central Division, registered as No. ACT_585518/2023 UPC_CFI_412/2023.

2. The patent at issue was filed on 26 April 2013 and relates to the field of speed detection of a vehicle, and more precisely, to detecting a speeding condition, i.e., a travelling speed of the vehicle above a location-based imposed speed limit, and also to providing a warning or a control signal to a vehicle based upon the location and current travelling speed of the vehicle. Its Independent claim 1 reads as follows:

   "A graded control signal system for warning a user of a vehicle (2), the system comprising;
   position providing means (4) disposed in the vehicle (2) and adapted to provide a location of the vehicle;
   determining means (10) disposed in the vehicle (2) or a remote server (6) and adapted to determine the location-based imposed speed limit by comparing the location of the vehicle with a location database (12), the location database including location-based imposed speed limits for a plurality of locations;

comparison means (14) disposed in the vehicle (2) or the remote server (6) and adapted to compare the current speed of the vehicle with a plurality of threshold values for each location of the vehicle wherein the location-based imposed speed limit provided by the determining means is one of these threshold values;
signalling means (18) adapted to produce a control signal responsive to an output of the comparison means (14), the control signal adapted to at least one of provide a warning and automatically control the current speed of the vehicle; and
compliance means (30) provided in the vehicle or the remote server adapted to determine if the user or vehicle complies with the control signal,
wherein
if the user or vehicle complies with the control signal, the signalling means (18) is adapted to generate a compliance signal on the basis of an output from the compliance means (30) and/or,
if the user or vehicle does not comply with the control signal, the signalling means (18) is adapted to generate a non-compliance signal on the basis of the output from the compliance means, and wherein
the compliance means (30) is adapted to monitor the response to the control signal over a pre-set period of time, setting a time threshold that indicates a time for which the user or vehicle should respond to the control signal and wherein
the compliance means (30) measures the user's or vehicle's response to the control signal by comparing a first current speed of the vehicle determined at a first time with a second current speed of the vehicle determined at a second time, the second time at a later time than the first time."

3. The claimant argues that the patent is not valid for the following reasons: extension of independent claims 1 and 8 beyond the content of the application as filed; lack of novelty; lack of novelty or lack of inventive step with regard to the dependent claims; insufficient disclosure of claim 4.

4. On 25 January 2024 the defendant requested that the Court, pursuant to Rules 9 and/or 334 'RoP', extend the time for the delivery of the statement of defence (and the counterclaim, if any) to 29 February 2024.

5. By order issued on 9 February 2024, the judge-rapporteur, having heard the parties, rejected the request and no application for a review of that order has been submitted to the panel.

6. In the meanwhile, on 2 February 2024 the claimant requested a decision by default, registered as No. App_5975/2024 UPC_CFI_412/2023.

GROUNDS FOR THE DECISION

Conditions for a decision by default.

7. Pursuant to Rule 355 'RoP' a decision by default against the defendant may be given where: i) the relevant request is submitted by the claimant; ii) the defendant fails to take a step within the time limit foreseen in the Rules of Procedure or set by the Court, or the party which was duly summoned fails to appear at an oral hearing, or the time limit for the defence to the claim has expired and thus, it is established that the service of the claim was effected in sufficient time to enable the defendant to enter a defence; and iii) the facts put forward by the claimant justify the

remedy sought and the procedural conduct of the defendant does not preclude to give such decision.

8. With particular regard to the condition which relates to the expiration of the time limit for the defence, Rule 277 'RoP' requires that the statement of claim is served by a method prescribed by the internal law of the state addressed for the service of documents in domestic actions upon persons who are within its territory or is actually served on the defendant under Chapter 2 of the Rules of the Procedure.

9. In the case at hand, in which the defendant did not file a defence to revocation and the claimant requested a decision by default, it appears evident from the notification of service of the statement of claim that this written pleading was served on the defendant on 25 November 2023; this circumstance is supported by the receipt of the postal courier which in fact indicates an earlier date (23 November 2023).

10. It may be added that in lodging its request to grant the extension of the time period relating to the submission of the defence to revocation (two months from the service of the statement of claim) the defendant did not expressly object that the statement of claim was served on 25 November 2023.

11. The fact that the submission of 39 appendices/exhibits identified in the statement of claim were not enclosed in the service, as the defendant seems to point out in that request, is not relevant because, under Rule 271 'RoP', a statement of claim, even if it refers to or announces the later submission of annexes, can be validly served on a defendant, provided that the statement of claim without the annexes enables the defendant to assert its rights in legal proceedings before the courts of the Unified Patent Court (hereinafter 'UPC) (see order of 13 October 2023, case UPC_CoA_320/2023). Indeed, annexes have, in general, an evidentiary function and are not indispensable for the understanding of the subject-matter and the cause of action and, as such, do not constitute an integral part of the statement of claim instituting the proceedings within the meaning of the European Regulation (EU) 2020/1784 (Service Regulation) and Rule 271 'RoP'. In the present case, the statement of claim appears to contain all the information that is essential to enable the defendant to understand the claim brought against him and in its request for time extension the defendant did not argue that annexes are indispensable for the understanding of the subject-matter and the cause of action.

12. Following these conditions, it is at the discretion of the Court whether to issue a decision by default or not. In the current situation the panel, exercising its discretionary powers, considers it appropriate to issue such a decision, taking into consideration that, as will be explained later in the present decision, the facts put forward by the claimant justify the remedy sought and that the non-defaulting party is entitled to a speedy procedure without delay. It must be added that, in general, expeditious decisions are one of the aims of the Unified Patent Court Agreement and that the legal framework of the 'UPC' provides the defendant with appropriate tools to provide justification for the default and to appeal the decision where unfavourable.

The patent at issue.

13. The patent at issue contains 13 claims of which claim 1 is an independent product claim and claim 8 is a corresponding independent method claim, and the remaining claims are dependent

on claim 1 (from 2 to 7) and on claim 8 (from 9 to 13). The invention is directed towards providing a compliance system that determines whether, or not, a user actively complies with the warning that is generated, thereby ensuring that a user and vehicle are correctly adhering to the legally imposed speed limits (para. [0001]).

14. According to the description of the patent the operation of a vehicle for transporting goods or humans is generally reliant on a user input, with the user being given total control on the travelling speed of the vehicle (paras. [0002] and [0003]). However, the user may excessively operate the throttle of the vehicle to thereby increase the speed of the vehicle beyond the safe imposed speed limit (para. [0004]).

15. According to para. [0007], the problem underlying the patent at issue is that of providing an adaptive warning system that can not only alert the user of a speeding condition – something that prior methods or systems already provided for – but also alert the user as to whether, or not, the user performs the correct action in response to such a warning.

16. As suggested by the claimant, claim 1 of the patent at issue may be structured as follows:
(1.) A graded control signal system for warning a user of a vehicle (2), the system comprising;
(1.a) position providing means (4) disposed in the vehicle (2) and adapted to provide a location of the vehicle;
(1.b) determining means (10) disposed in the vehicle (2) or a remote server (6) and adapted to determine the location-based imposed speed limit by comparing the location of the vehicle with a location database (12), the location database including location-based imposed speed limits for a plurality of locations;
(1.c) comparison means (14) disposed in the vehicle (2) or the remote server (6) and adapted to compare the current speed of the vehicle with a plurality of threshold values for each location of the vehicle wherein the location-based imposed speed limit provided by the determining means is one of these threshold values;
(1.d) signalling means (18) adapted to produce a control signal responsive to an output of the comparison means (14), the control signal adapted to at least one of provide a warning and automatically control the current speed of the vehicle; and
(1.e) compliance means (30) provided in the vehicle or the remote server adapted to determine if the user or vehicle complies with the control signal, wherein
(1.e.1) if the user or vehicle complies with the control signal, the signalling means (18) is adapted to generate a compliance signal on the basis of an output from the compliance means (30) and/or,
(1.e.2) if the user or vehicle does not comply with the control signal, the signalling means (18) is adapted to generate a non-compliance signal on the basis of the output from the compliance means, and wherein
(1.f) the compliance means (30) is adapted to monitor the response to the control signal over a pre-set period of time, setting a time threshold that indicates a time for which the user or vehicle should respond to the control signal and wherein
(1.g) the compliance means (30) measures the user's or vehicle's response to the control signal by comparing a first current speed of the vehicle determined at a first time with a second current speed of the vehicle determined at a second time, the second time at a later time than the first time.

17. Claim 8 can be structured as follows:
    (8.) A method for warning a user of a vehicle by means of a graded control signal system, the method comprising:
    (8.a) a detecting step for detecting a location of the vehicle;
    (8.b) a determining step for determining the location-based imposed speed limit by comparing the location of the vehicle with a location information stored in a location database, the location information including location-based imposed speed limits for a plurality of locations;
    (8.c) a comparing step for comparing a first current speed of the vehicle with the location-based imposed speed limit with a plurality of threshold values for each location of the vehicle wherein the location-based imposed speed limit provided by the determining means is one of these threshold values;
    (8.d) a generating step for generating a control signal responsive to the result of the comparing step, wherein the control signal is adapted to one of: provide a warning, automatically control the current speed of the vehicle, or a combination thereof; and
    (8.e) a compliance step for monitoring the user or vehicle compliance with the control signal[,] wherein
    (8.f) the response is monitored over a pre-set period of time and, setting a time threshold that indicates a time for which the user or vehicle should respond to the control signal; and wherein
    (8.g) the compliance step includes comparing a first current speed of the vehicle determined at a first time with a second current speed of the vehicle determined at a second time, the second time at a later time than the first time.

18. The panel agrees with the claimant regarding the fact that the person skilled in the art – according to which the interpretation of the claim has to be carried out – has to be identified in an engineer with a university degree who has several years of practical experience in the design and implementation of driver assistance systems.

19. The panel notes that features 1.a, 1.b and 1.c of claim 1 specify, respectively, the vehicle position providing means, the location-based imposed speed limit determining means and the comparison means. Feature 1.d relates to signalling means, where a control signal is adapted to at least one of provide a warning and automatically control the current speed.

20. Feature 1.e discloses two compliance means that are respectively activated if the car user complies with the control signal (1.e.1) or not (1.e.2). The panel considers that the person skilled in the art would understand the relative expressions as describing the different outcomes of the compliance check described in feature 1.e. It follows that the system must be able to perform both alternatives, that is to say generate a compliance signal due to feature 1.e.1 and generate a non-compliance signal due to feature 1.e.2 (see Fig. 4 and 6 of the patent in suit).

21. Lastly, features 1.f and 1.g refer to the response of the user or the vehicle and also define features with two alternatives.

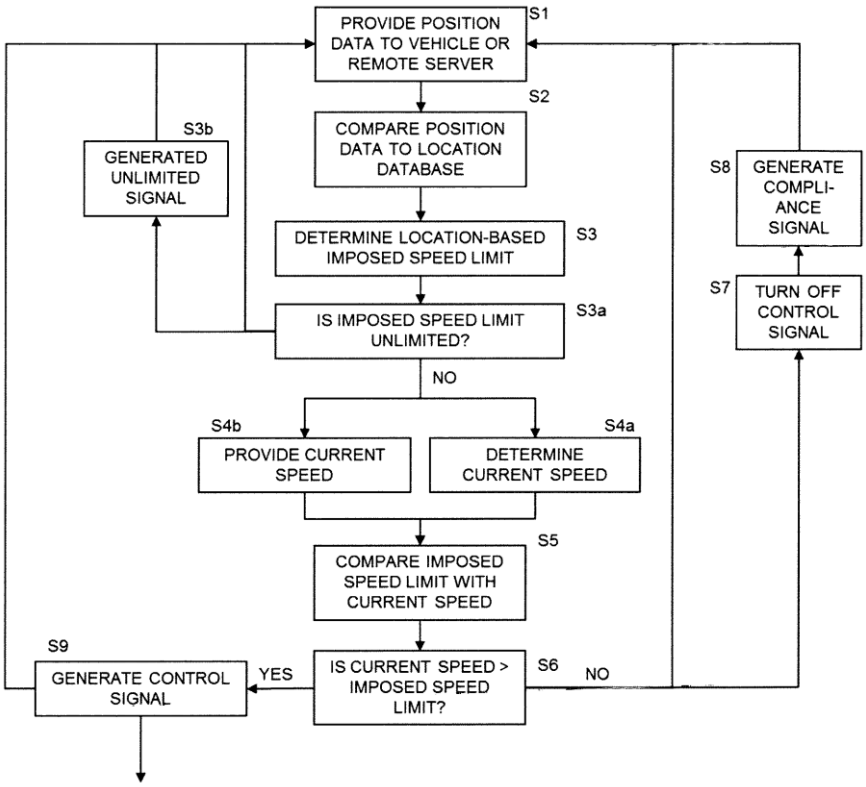


FIG 4

Independent claims 1 and 8: lack of novelty in view of 'D9'.

22. With regard to independent claims 1 and 8, the Court considers it appropriate to examine first the grounds for invalidity based on the lack of novelty, which appears to be the most straightforward argument to assess, and which is well-founded.

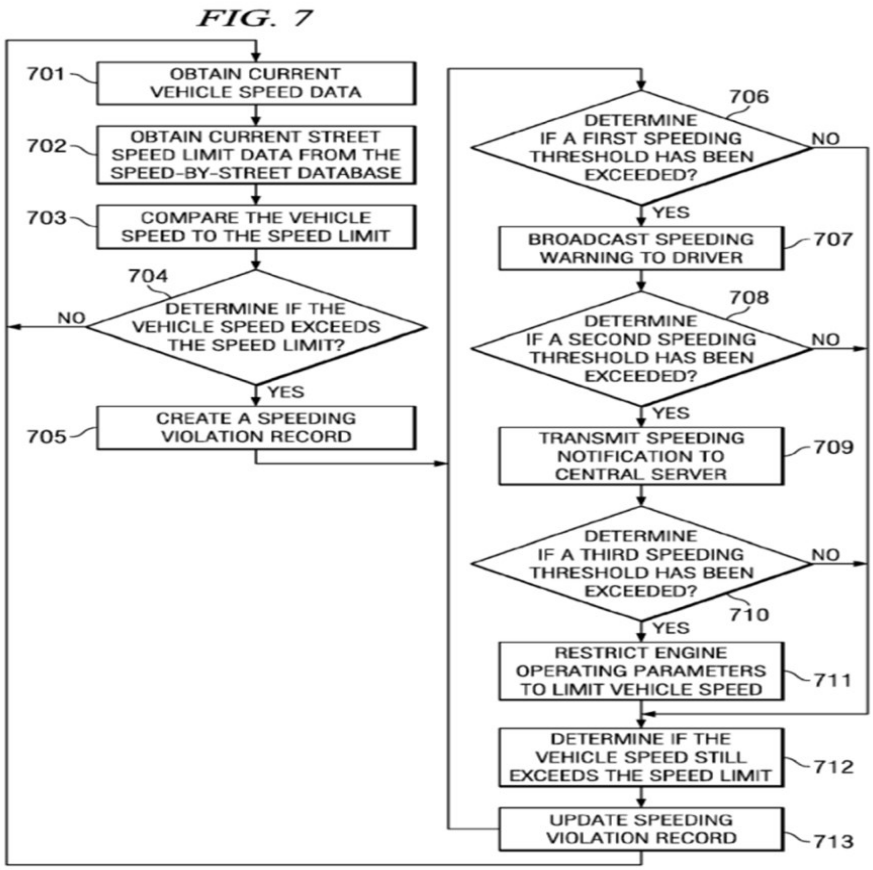
23. The claimant argues that the subject-matter of claim 1 lacks novelty in view US 2011/0267205 A1 ('D9'). 'D9' was published on 3 November 2011 and is therefore part of the state of the art for the purpose of Article 54 (2) of the European Patent Convention.

24. 'D9' relates to a system and method for monitoring driver behaviour and vehicle driving conditions and, more particularly, to a system and method for comparing driving speed to a speed-by-street database to identify speeding violations and/or errors in the speed-by-street database (para. [0002]).

25. 'D9' specifically addresses a driver mentoring system which "provides mentoring to the driver in order to reduce adverse driver actions and inactions" and which can incorporate "a third party mapping database in order to provide maximum road speed data for any particular location on a road such that the driver may avoid speeding violations and/or maintain safe, legal, and established speed limits" (para. [0012]).

26. Among several teachings, 'D9' discloses a method for identifying speeding violations by a vehicle's monitoring system, which obtains the current vehicle speed data and the speed limit data for the current street from the speed-by-street database and compares the vehicle speed

to the speed limit pulled from this speed-by-street database, and providing for a signal if the speeding threshold is exceeded (see paras. [0089]-[0092] and Fig. 7).



27. The panel is of the opinion that all the features of claim 1 of the patent at issue are disclosed in 'D9'.

28. In particular, feature 1, which refers to a graded control signal system for warning a user of a vehicle, is disclosed in the embodiment according to Fig. 7 of 'D9', which teaches a "warning signal … sent to the driver when the measured acceleration exceeds the threshold", whereby the operation is based on a plurality of threshold comparisons (para. [0071], steps 703, 706, 707 in Fig. 7).

29. Feature 1.a, which refers to a system which comprises "position providing means disposed in the vehicle and adapted to provide a location of the vehicle", is disclosed in 'D9' which discloses that "the vehicle monitoring system includes a GPS receiver 207 in each vehicle in the fleet and which is configured to track in at least one of real-time or over-time modes the location and directional movement of the vehicle" (para. [0041]).

30. Due to feature 1.b the system in the claim 1 also comprises "determining means disposed in the vehicle or a remote server and adapted to determine the location-based imposed speed limit by comparing the location of the vehicle with a location database, the location database including location-based imposed speed limits for a plurality of locations". This feature is disclosed in para. [0077] of 'D9', which specifies that the "location of the vehicle is determined, for example, from a GPS receiver" and that "after identifying the current street that the vehicle is using, the vehicle monitoring system can look up the speed limit for that street in a speed-by-street database".

Since the speed-by-street database comprises speed limits for roads, it corresponds to the claimed location database (para. [0089]: "the monitoring system also obtains speed limit data for the current street from the speed-by-street database (702)").

31. Feature 1.c refers to comparison means to compare the current speed of the vehicle with a plurality of threshold values for each location of the vehicle, wherein one of these threshold values is the imposed speed limit defined according to feature 1.b. In 'D9' Fig. 7 discloses in step 706 a test of whether the speed of the vehicle exceeds a first threshold, and this is also described in para. [0090], according to which "the monitoring system then determines if a first threshold has been passed (706)". It follows that claim 1 of 'D9' outlines the steps of "determining a posted speed limit for the location from a speed-by-street database" and "evaluating whether the speed of the vehicle at the location exceeds a threshold, the threshold being based on at least the posted speed limit for the location", which implies that the system comprises comparison means.

32. 'D9' also proposes comparisons against a plurality of thresholds as it discloses that the "monitoring system 602 may be configured to use multiple speeding thresholds and may determine different courses of action" (para. [0088]; see also Fig. 6). The comparisons are executed by the monitoring system of the vehicle as the "vehicle 601 [has a] monitoring system 602" (para. [0083]) and the "monitoring system 602 identifies a speeding condition" (para. [0086]).

33. Also disclosed in 'D9' is feature 1.d. consisting of "signalling means adapted to produce a control signal responsive to an output of the comparison means, the control signal adapted to at least one of provide a warning and automatically control the current speed of the vehicle". The process described in Fig. 7 involves a step 706 of determining whether a threshold is exceeded, and, if the threshold is exceeded, the following step 707 is that of broadcasting a warning to the driver. Para. [0090] describes that "the monitoring system then determines if a first threshold has been passed (706). If the first speeding threshold is passed, then a speeding warning, such as an audible message or tone or a visible message or warning light, is broadcast to the driver (707)". This threshold comparison is executed by the monitoring system in the vehicle, which is the comparison means according to feature 1.c, and which necessarily requires signalling means to give any kind of control signal to the device which ultimately gives the warning to the driver (e.g., in terms of a display or a speaker; as mentioned in claims 37 and 38 in 'D9').

34. Feature 1.e, which relates to a "compliance means provided in the vehicle or the remote server adapted to determine if the user or vehicle complies with the control signal" is also disclosed in 'D9' which discloses that after the warning is given to the driver "the monitoring system then determines if a second speeding threshold has been exceeded (708)" (para. [0091]). This implies determining whether the user complies with the control signal or not.

35. Feature 1.e.1 refers to the first of two possible outcomes of the determination, that is, if the user complies with the control signal, the signalling means is adapted to generate a compliance signal on the basis of an output from the compliance means. 'D9' discloses that if the second speeding threshold has not been exceeded (Fig. 7: the "NO" outcome of step 708), the "monitoring system evaluates if a speeding condition still exists (712), updates the speeding record (713), and begins the process again" (para. [0091]). It is also outlines that "if the vehicle is no longer speeding, then the speeding violation record is closed (713)" (para. [0090]). This updating of a violation

record and also the closing of the record under the condition that the vehicle is no longer speeding is to be understood as a compliance signal based on the output from the compliance means. As it is obvious to a person of ordinary skill in the art, triggering the process from the beginning requires the generation of a signal to control the process. Therefore, this signal represents a compliance signal according to feature 1.e.1.

36. It may be added that the patent at issue (both in feature 1.e.1 and in feature 1.e.2) discloses a generic compliance signal or, respectively, a non-compliance signal to the car user or other components, and not a specific warning to the car user, so in this regard no novelty in view of 'D9' can be identified.

37. The second possible outcome of the compliance check is defined in feature 1.e.2, that is, if the user or vehicle does not comply with the control signal, the signalling means is adapted to generate a non-compliance signal on the basis of the output from the compliance means. 'D9' discloses that "after warning the driver (707), the monitoring system then determines if a second speeding threshold has been exceeded (708). If the second speeding threshold has been exceeded, then monitoring system transmits a speeding notification to a central monitoring server (709)" (para. [0091], Fig. 7: "YES" outcome of step 708). This means that, if the user or the vehicle does not comply with the control signal (in D9: "speeding warning to driver"), there is a signalling means generating a non-compliance signal, which is transmitted to a central server.

38. Feature 1.f refers to compliance means which is adapted to monitor the response to the control signal over a pre-set period of time, setting a time threshold that indicates a time for which the user or vehicle should respond to the control signal. This feature is disclosed in para. [0071] of 'D9', which describes a timer for monitoring the response of the user to the control signal in para. [0071]: "A warning signal is sent to the driver when the measured acceleration exceeds the threshold and/or when the speed exceeds those contained in the speed-by-street dataset. A timer may be started when the warning signal is sent to allow the driver a predetermined amount of time to reduce the acceleration or speed. A notification signal may be sent to a base station if the driver fails to reduce acceleration or speed during the predetermined amount of time. The timer may be configurable for any amount of time, including zero or no delay." Since the timer in 'D9' is started after the sending of the warning signal to the driver ("broadcast" in step 707 in the flowchart of Fig. 7), it affects the checks provided by the compliance means (step 708 in the flowchart of Fig. 7).

39. As for feature 1.g, which specifies that the compliance means measures the user's or vehicle's response to the control signal by comparing a first current speed of the vehicle determined at a first time with a second current speed of the vehicle determined at a second (later) time, the panel points out that the timer in 'D9', as explained with respect to feature 1.f, is implemented to allow the driver a predetermined amount of time to reduce the speed. This implies that the speed of the vehicle is determined at subsequent points in time, and that there is a comparison of a speed of the vehicle at a first time with a speed of the vehicle at a second time. 'D9' also discloses that the timer may be configured for "any amount of time" [para. [0071]), which includes a time span greater than zero.

40. The same arguments explained with regard to claim 1 also preclude the patentability of independent claim 8, which describes a method whose features are congruent with the features of claim 1, except for features 1.e.1 and 1.e.2, which are not listed therein.

Dependent claims: lack of novelty or inventive step.

41. The challenges brought by the claimant against the dependent claims are also successful as the grounds for revocation based on the lack of novelty or inventive step are well-founded.

42. Claim 2 reads as follows: "The system of claim 1, wherein the system is configured to provide a predictive or pre-warning system, the signalling means (18) being adapted to provide a changing speed limit warning to alert the user that a different imposed speed limit will be enforced in the next stretch of road." Claim 13 corresponds to claim 2.

43. The technical problem underlying these claims is to provide a system that avoids short-term reactions to changing speed limits.

44. The panel agrees with the claimant when the claimant argues that 'D9' has to be considered as the closest prior art and that, with regard to the referred technical problem, the person skilled in the art would have considered US 2007/0050130 A1 ('D11'), which was published on 1 March 2007 and, therefore, forms the prior art for the patent at issue.

45. 'D11' refers to "navigation systems adapted for use with a vehicle, and more particularly to an improved system configured to predictively communicate upcoming conditions to an operator of the vehicle" (para. [0002]) and discloses a system of alerting the operator not only when the current speed limit is exceeded, but also where the upcoming speed limit is exceeded (para. [0026]).

46. The panel is of the opinion that a person skilled in the art proceeding from 'D9' and 'D11' would arrive at the claimed subject-matter without exercising inventive skill.

47. Claim 3 reads as follows: "The system of any of the preceding claims wherein, a compliance signal is generated all the time that the user is responding to the control signal, but if the user does not respond by performing enough of the correct action, to sufficiently correct the current speed of the vehicle then the time threshold ensures further action is taken to alert the driver to perform a further action either by a repetition of the control signal, or by generating a second or a third control signal". Claim 10 corresponds to claim 3.

48. Similarly, in these claims the technical problem is to provide a system that avoids short-term reactions to changing speed limits.

49. Considering 'D9' as the closest prior art, a person skilled in the art would have taken into account DE 10 2008 040 982 A1 ('D12'), published on 11 February 2010 and thus prior art for the patent-in-suit.

50. 'D12' (in the submitted machine translated version 'D12T') relates to "a driver information device comprising a locating unit for determining the current vehicle position, means for detecting the actual vehicle speed, and means for outputting information to the driver" (para. [0001]) and discloses a system that is aware of upcoming speed limits of a route course lying ahead of the vehicle and that uses this knowledge to inform a driver of the upcoming speed limit

(para. [0015]). In particular, “the braking information BH applies until the vehicle has braked to the speed limit in advance. After that, the speed limit in advance is displayed as information SI until the speed limit applies. From this point on, the speed limit is displayed as information SLI” and if the driver does not brake (or does not brake sufficiently), the brake recommendation is replaced by the speed warning SW when comfortable braking is no longer possible. From this point on, the corresponding warning SW for the speed limit located in advance is displayed until the speed limit applies and this limit is not observed (see paras. [0017] and [0018]).

51. The skilled person would combine the teaching of ‘D9’ with the teaching of ‘D12’ and would thus arrive at the claimed subject-matter without exercising inventive skill.

52. Claim 4 reads as follows: “The system of any of the preceding claims wherein the compliance means (30) is adapted to determine if the location-based imposed speed limit is a stepped-down speed limit, and communicate with the signalling means (18) to provide a specific urgent control signal if the location-based speed limit is a stepped-down speed limit and the vehicle (2) exceeds the location-based imposed speed limit.”

53. The panel agrees with the claimant that the patent at issue fails to provide any technical explanations as to what distinguishes a “specific urgent control signal” from a (common) control signal and, hence, claim 4 adds nothing to claim 1 that would not already be disclosed by ‘D9’.

54. Claim 5 reads as follows: “The system of any of the preceding claims wherein the system is configured to provide a predictive acceleration of the vehicle and issue a control signal before the vehicle (2) exceeds the location-based imposed speed limit”.

55. Considering ‘D9’ as the closest prior art, the person skilled in the art would have considered US 2011/0050459 A1 (‘D13’), published on 3 March 2011 and thus prior art for the patent-in-suit.

56. ‘D13’ refers to “devices for speed detection and warnings” (para. [0001]) and also discloses a device for actively warning an operator of a vehicle that they are driving too fast (para. [0072]).

57. As ‘D9’ provides for “an accelerometer module (XLM) 201 which includes at least one accelerometer for measuring at least one of lateral (sideways), longitudinal (forward and aft) and vertical acceleration in order to determine whether the driver is operating the vehicle 101-103 in an unsafe or aggressive manner” (para. [0030]). To arrive at the subject-matter of claim 5 of the patent at issue, the acceleration obtained from the accelerometer of ‘D9’ just has to be reused in the way suggested by ‘D13’ and this does not require exercising inventive skill.

58. Claim 6 reads as follows: “The system of any of the preceding claims wherein the compliance means (30) is adapted to monitor the deceleration or acceleration of the vehicle (2) the deceleration or acceleration being indicative of the response to the control signal, or the compliance means is adapted to monitor an actuation of a component of the vehicle, the component being user operated and able to affect the speed of the vehicle”. Claim 11 corresponds to claim 6.

59. Claim 6 comprises two alternatives: in the first, the compliance means is adapted to monitor acceleration or deceleration of the vehicle, which is considered as a response to the control signal; in the second, the compliance means is adapted to monitor the actuation of a component of the vehicle (for example, the brake or the throttle pedal of the vehicle) that affects speed.

60. The first alternative of claim 6 is disclosed by ‘D9’, which teaches that a notification is issued if a driver does not reduce acceleration in time in response to a warning signal (see para. [0071]).

61. The second alternative does not require an inventive step in view of the combination of the teachings of ‘D9’ and US 2001/0003808 A1 (‘D14’), which was published on 14 June 2001 and thus forms prior art for the patent at issue.

62. Indeed, ‘D14’ relates to “a vehicle speed control system” (para. [0002]) and to determine that a driver of a vehicle has reduced the driving speed it suggests determining whether the driver has depressed a brake or has released an accelerator pedal (see para. [0014]).

63. Claim 7 reads as follows: “The system of claim 6, wherein the compliance means (30) is provided with an onboard storage (22) for storing the location-based imposed speed limit and the current speed of the vehicle (2) at a first time, and wherein the vehicle is provided with speed determining means (8) for calculating or determining a second current speed of the vehicle at a second time, wherein the deceleration or acceleration is determined by the compliance means on the basis of the difference between the second speed of the vehicle and the first speed of the vehicle and the difference between the second time and the first time.” Claim 12 corresponds to claim 7.

64. The claims lack inventive step as ‘D9’ teaches determining the speed of a vehicle by means of a speedometer (see para. [0034]) and ‘D13’ discloses the same criteria for determining an acceleration or a deceleration (see para. [0050]).

65. Lastly, dependent claim 9 reads as follows: “The method of any of claims 8 to 9, wherein, when the compliance to a control signal is detected, the control signal is changed”.

66. The detected change of a control signal is disclosed by ‘D11’ which teaches that a signal may convey varying degrees of non-compliance (see para. [0022]).

67. The person skilled in the art would combine the teachings of ‘D9’ and ‘D11’ and arrive at the claimed subject-matter of claim 9 without exercising inventive skill.

Conclusions.

68. For these reasons, the grounds for invalidity raised by the claimant against the patent at issue and addressed by the panel are well founded and any arguments of the parties which have not been specifically considered must be deemed absorbed.

69. Therefore, patent EP ‘333 shall be revoked.

Costs.

70. The costs of the Court and of the claimant shall be borne by the defendant, as the unsuccessful party.

71. The panel is of the opinion that the value of the revocation action for the purpose of applying the scale of ceilings for recoverable costs has to be set at 1,000,000 euros, taking into account the number of the ‘UPC’ Member States in which the patent is in force, the level of development of the market and the remaining life of the patent.

DECISION

The Court

a) grants the request for a decision by default filed by Bayerische Motoren Werke Aktiengesellschaft on 2 February 2024;

b) grants the revocation action filed by Bayerische Motoren Werke Aktiengesellschaft on 6 November 2023;

c) declares the European patent n° EP 2 796 333 revoked in its entirety with regard to the territories of the Contracting Member States for which the European patent had effect at the date of the filing of the revocation action;

d) orders that the Registry shall send a copy of this decision to the European Patent Office and to the national patent offices of any Contracting Member States concerned, after the deadline for appeal has passed;

e) orders that the costs of the proceedings shall be borne by the defendant.

Issued on 16 September 2024.

Paolo Catallozzi — Presiding judge and judge-rapporteur

Paolo Catallozzi
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Tatyana Zhilova — Legally qualified judge

Tatyana Zhilova
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Dörte Otten-Dünnweber — Technically qualified judge

Dörte Dr. Otten-Dünnweber
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Datum: 2024.09.16 17:14:16 +02'00'

Margaux Grondein — Clerk

Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Signature numérique de MARGAUX MARIE-ANGE GRONDEIN

ORDER DETAILS

Order no. ORD_51965/2024 in ACTION NUMBER: ACT_585518/2023
UPC number: UPC_CFI_412/2023
Action type: Revocation Action
Related proceeding no. Application No.: 5975/2024
Application Type: Generic procedural Application