

OPINION UNDER SECTION 74A

Patent	GB 2416421
Proprietor(s)	Balius Systems Limited
Exclusive Licensee	
Requester	Stemco LP, on 31 December 2008
Observer(s)	Balius Systems Limited
Date Opinion issued	24 March 2009

The request

1. The Comptroller has been requested to issue an opinion as to whether claim 1 of GB2416421 B is infringed by the system offered by Stemco LP known as the BAT RF System. The requester is not concerned with the validity of the patent.

Observations

2. Observations were filed by the proprietor, inviting the Comptroller to “refuse the request”.

Observations in reply

3. The requester replied that he was content to rely on his initial submission.

Discussion

ALLOWABILITY

4. The proprietor invites the Comptroller to “refuse” the request. The observations filed by the proprietor do not address any of the grounds for “refusal” set out in rule 94 (1) of the Patents Rules 2007, thus I think it is clear that the proprietor desires the Comptroller to refuse to find non-infringement rather than that the Comptroller should, under rule 94 (1), not issue an opinion.

BACKGROUND

5. The patent document describes a system which monitors the use of a vehicle and sends vehicle use information, wirelessly, to a central database or to regulatory authorities. The invention is based on a portable “key”, such as a “smart card” which allows a driver to operate the vehicle and which records monitored data relating to vehicle operation and driver working hours. Should the vehicle be driven too fast, or

for too long, or be overloaded, for example, then the driver will be alerted by the system and such undesirable vehicle operation will be evident at a central station.

6. The BAT RF system is described in exhibit A filed with the request and is summarized on page 3 of the request. Vehicle tyre pressure, mileage and fuel consumption are measured by sensors. The data may be transferred from the sensors to an RFID reader as the vehicle passes a gate, or may be transferred to an on-board communications module for onward transmission. Reports on improper tyre pressure, on mileage, on fuel economy and on fuel usage are available at a central station to operations and maintenance staff. The driver may be alerted when tyre pressure is too low.

CLAIM 1 CONSTRUCTION

7. Claim 1 recites the following:

“Usk is a system for the management, control, and monitoring of vehicles in which the system includes a key having a memory, the memory storing vehicle user validation information. Such that the key will only allow an authorised user to operate the vehicle, the memory further storing parameters relating to vehicle roadworthiness, and vehicle user regulations, including permitted speeds, weight, and users work hours, and rest periods. The key receiving the measured values of these parameters during operation of the vehicle, the system including means for comparing the measured values with the stored values, and informing, or warning the user if the measured parameters fall outside the previously stored parameters, the measured parameters also being stored in the memory of the key to provide a historical record of the vehicle use and the vehicle user, and also so that they may be downloaded to a central database, the system also including wireless communications means for sending vehicle use information to a central database, or regulatory authorities.”

8. The claim comprises three sentences. As the requester points out, multiple sentences within an individual claim are unusual. Nevertheless, the requester submits that claim 1 may be restated, for the purpose of construction, as a single sentence by replacing the two internal full stops with commas. Restating a claim is dangerous in that subtle changes in scope may ensue, but I do agree that the scope of this claim as restated by this amended punctuation is the same or very similar to that of the claim in the specification.

9. The proprietor provides no explanation of why he has chosen to file a claim in the form of multiple sentences, but he does not rebut the requester’s assertion that the whole claim should be read as defining a single monopoly.

10. The standard principles of claim construction were set out by Lord Hoffman in *Kirin-Amgen and others v Hoechst Marion Roussel Limited and others* [2005] RPC 9 (see paragraphs 32-52). The key point made in that judgment was that the approach in construing a claim should be to establish “what a person skilled in the art would have thought the patentee was using the language of the claim to mean”. This then is the approach I must take.

11. Considering first the presentation of claim 1 as three sentences, the second and third sentences of the claim refer frequently to integers introduced by earlier sentences. Moreover, the conjoining phrase at the start of the second sentence (“such that”) has context only with the first sentence. The sentences thus appear to be not independent, rather they appear to form part of a unitary entity defining the invention and I believe that the skilled reader would treat them thus. I therefore agree with the requester’s submission that the whole claim should be read as a whole.

12. Claim 1 commences: “Usk is a system for the management, control and monitoring of vehicles in which the system includes a “key” having a memory, the memory storing user validation information.” Four features are identifiable in this sentence: that the system comprises a key, that the key has a memory, that the system is “for the management, control and monitoring of vehicles” and that the memory stores “vehicle user validation information”. Referring to the description it is seen that the “key” has a broader meaning than that in common English and it may for example comprise a “smart card”. I will consider the third feature, which appears to be important.

13. Referring to the “Objectives” section of the patent on page 1 and the paragraph at page 2 lines 8-11, it appears that the “management....of vehicles” subject to the USK system is effected remotely by managers with access to the database. Hence the USK system is more a management tool than a system which manages vehicles in, and of, itself.

14. Referring to “control...of vehicles”, it appears from paragraph 7 on page 9 that the USK system will intervene directly to prevent use of a vehicle by an unauthorised user. Otherwise, for the purpose of conformance with various regulations, which is another function of the system, USK effects “control” indirectly by warning the user or manager of a transgression. In my opinion “control” should be afforded a broad meaning such as to encompass indirect control.

15. Referring to “monitoring...of vehicles”, this phrase possesses the natural meaning in the art.

16. The preposition “for” at the outset of what is an apparatus claim requires me to consider whether “suitable for” construction is appropriate, that is, whether “system for the management, control, and monitoring of vehicles” should be treated as “system suitable for the management, control, and monitoring of vehicles”, which would encompass systems that do not relate to vehicles but would be suitable for use in relation to vehicles. The body of the claim makes clear that the system unquestionably *does* relate to vehicles and so I do not consider that “suitable for” construction is appropriate.

17. Considering the above paragraphs, I believe an appropriate construction of “system for the management, control, and monitoring of vehicles” is “system *for use in* the management, control and monitoring of vehicles”, with a broad construction afforded to “control”.

18. The claim continues, as a second sentence:

“Such that the key will only allow an authorised user to operate the vehicle, the memory further storing parameters relating to vehicle roadworthiness, and vehicle user regulations, including permitted speeds, weight, and users work hours, and rest periods.”

19. It is clear that the first clause of the second sentence is linked to the last clause of the first sentence, that is, that the key restricts operation of the vehicle by reference to the vehicle user validation information.

20. The second portion of the second sentence: “the memory further storing parameters relating to vehicle roadworthiness, and vehicle user regulations” introduces storage in the key of “parameters”. The use of “parameters” in the plural and the reciting of the two categories of “vehicle roadworthiness” and “vehicle user regulations” suggests that the construction of this passage is that at least one parameter relates to vehicle roadworthiness in addition to parameters relating to vehicle user regulations.

21. The final part of the second sentence: “including permitted speeds, weight, and users work hours, and rest periods” lists four required types of vehicle user regulation parameters.

22. The last sentence of the claims commences:

“The key receiving the measured values of these parameters during operation of the vehicle, the system including means for comparing the measured values with the stored values, and informing, or warning the user if the measured parameters fall outside the previously stored parameters, the measured parameters also being stored in the memory of the key to provide a historical record of the vehicle use and the vehicle user”.

23. The meaning seems clear: the key receives measured values of the parameters obtained during vehicle operation and stores the measured values. Further, the system compares the measured values with the stored parameters, as recited in the second sentence, and informs or warns the vehicle user if at least one parameter lies outside a range related to the stored parameter. As a simple example, the driver will be alerted if he or she drives too fast.

24. The use of the plural in “if the measured parameters fall outside” suggests that the phrase could be construed to mean that all of the parameters should lie outside the permitted range, but I do not consider the skilled address would read the claim in this way and accordingly I believe that the phrase “if the parameters fall outside” should be construed as “if at least one of the parameters fall outside”.

25. The last sentence of the claim concludes:

“and also so that they may be downloaded to a central database, the system also including wireless communications means for sending vehicle use information to a central database, or regulatory authorities”.

The first part of the above portion appears to mean that it must be possible in a system of the invention to transfer the measured values which have been stored to a central database. The second part makes clear that the system includes wireless communication means. The use of "vehicle use information" without "and vehicle user information" suggests that only the former need be sent wirelessly to a central database or to regulatory authorities.

ASSESSMENT OF WHETHER BAT RF FALLS IN THE SCOPE OF CLAIM 1

26. The requester presents four reasons for non-infringement. I shall address these in turn. If I cannot form an opinion on infringement on the basis of these reasons I will assess further integers of the claim.

The first reason presented by the requester is that:

" the BAT RF system does not exercise... **control**...of vehicles"

The requester states that BAT RF is passive because "it does not interfere with the operation of the vehicle".

27. The proprietor in reply states (at page 3 of his observations) that pages 8-11 of the BAT RF presentation:

"demonstrate the system... to be clearly active also"

and that the evidence in the presentation

"demonstrates the system to be a management control system".

28. As discussed in the construction section above, the term "control" as used by the proprietor in the application appears to have a broader meaning than the normal English meaning of the word which the requester submits should be used. The description does not suggest, for example, that the USK system will prevent operation of the vehicle above the regulation speed nor act to prevent operation of the vehicle when the driver is due to take a rest. The "control" in USK appears to lie in giving local or remote indications of transgressions, the local indication encouraging the driver to take a rest, for example, and the remote indication enabling supervisors to identify transgressors. As a record of transgression is retained by USK, it is clear that USK, in conjunction with a conventional chain of command, will be expected to act to promote operation of the vehicle within the rules. In these senses it exerts "control".

29. Referring to the BAT RF presentation at page 7, the lower part of this page shows that the driver of a vehicle running under the BAT RF system will be warned by the system should tyre pressure be below a desired target air pressure. Applying the required broad construction of "control", it appears that BAT RF will act to control the vehicle *via* the agency of the driver, who will be expected to react to the warning. The BAT RF presentation at page 13 depicts tyre inflation "exceptions", which must be expected to lead to management intervention to restore tyre pressure, so that

BAT RF, by the agency of supervisors, can be said to act to control tyre pressure by this route also. Hence BAT RF does appear to exert “control” in the broad sense in which it is used by the proprietor and in which sense he must expect the reader to use it also. For these reasons I do not believe that the first reason for non-infringement to be sound.

30. The second reason presented is that:

“the BAT RF system does not have a *key that will **only allow an authorised user to operate the vehicle.*** Whilst arguably any vehicle employing the BAT RF system may have a key allowing a user to operate the vehicle, the memory where the BAT RF data is stored will not be in this key, thus an essential integer will be missing as the claim language requires the key to have the memory”.

The proprietor focuses on the passage: “Whilst arguably any vehicle employing the BAT RF system may have a key *allowing a user to operate the vehicle*”, stating that this would not be possible, or acceptable, under present E.U. law. This may or may not be correct but it is not relevant to the question of infringement. The proprietor does not address the point that the key which may be used to operate a vehicle within the BAT system is said not to possess a memory holding BAT RF information. I can find nothing in the BAT RF presentation which implies the use of a key holding BAT RF information and conclude that the second reason is sound.

31. The third reason presented is that:

“The BAT RF system does not have a memory *storing ...**vehicle user regulations, including permitted speeds, weight, and users work hours, and rest periods.***”

The requester submits that the BAT RF system is only concerned with whether tyre pressures are at their recommended level, but this does not appear to be correct, because BAT RF appears also to monitor mileage and fuel consumption. However, I can find nothing in the observations addressing this reason and I can find nothing in the BAT RF presentation which suggests that BAT RF relates in any way to vehicle user regulations such as permitted vehicle speeds, vehicle weight, user work hours, and user rest periods. I therefore conclude that the third reason is sound.

32. The fourth reason presented is that:

“The BAT RF system *does not provide a historical record of...the vehicle user.* Instead the BAT RF system is merely concerned with recording *vehicle data.*”

The requester points out that BAT RF will record information relating to the vehicle but does not record information relating to the user. The observations appear to be silent on this point and I can find nothing in the BAT RF presentation which leads away from this assessment. I therefore conclude that the fourth reason is sound.

33. I believe that three of the four reasons for non-infringement are sound. As only one sound reason is required I do not consider that I need to assess any further integers of the claim.

Opinion

34. I conclude that use of the BAT RF system, as presented in exhibit A, does not infringe claim 1 of GB2416421B.

Application for review

35. Under section 74B and rule 98, the proprietor may, within three months of the date of issue of this opinion, apply to the comptroller for a review of the opinion.

NOTE

This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.

Keith Sylvan
Examiner