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Intellectual Property Court

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Frontier Marques street - Palace of Justice - 1098-00 J Lisbon

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Proc.N 167 ° / 12.5YHLSB

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CONCLUSION - 05/01/2015

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VERDICT

1 - Report

TECMIC - Microelectronics technologies, SA, headquartered in

Industrial Zone of Comedouras, Lot 15, RJC Disc., Arruda Wine and

Frotcom International, LTD., Based in Cyprium Building, Avenida 25

April, No. 15 B, 2 C, Linda A Old, Oeiras, brought this action

Declarative in the form of ordinary proceedings against MANUEL ALBERTO

SANTOS LONOREIRA, resident at Rua Manuel Mendes Tamafa, Cidacos,

Oliveira de Azeméis, and BEGIN NEW, LDA., Based in

Avenue Mouzinho de Albuquerque Azurara, Vila do Conde.

They ask:

a) a declaration of invalidity of the national Patent nD

102634, in accordance with Article 113, point a) of the Code of

Industrial Property (CPI); and

b) the accused are jointly condemned to pay the author one 1

compensation in the amount of 25,000.00 Euros and 2nd author compensation

the amount of EUR 20,000.00 to repair damage suffered by these in

result of the false accusation of infringing the exclusive patent.

They claim to do so, in 06/18/2001, the 1st defendant made the request of

said Pat. No. 102634 concerning a multipurpose intelligent system

mobile phone ", which, after various vicissitudes in proceedings before the Institute

National Industrial Property (INPI), came to be granted on 03.04.2005.

It follows that the patented invention, characterized by (i) a module

Safety provided with sensors and actuators, (ii) a WAP server module, (iii)

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1 Judgment

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a mobile phone and (iv) allow the implementation of alarm systems

Remote interação, wherein the three components (the security module,

WAP server module and mobile phone) are associated with the purpose of enabling the

building alarm systems with remote control, lacks novelty,

since the date of submission of the request of the components

invention were already known in the respective area, and even as ordinary use

current, under stated by the authors in the application.

Moreover, the patent claims in question were fully

replaced, have the final version was submitted on 02-03-2005, and

if the state of the art already covered, in June 2001, alarm systems

the characteristics given in the invention, this also happening in March

2005, when there were additional elements to prove it and that

the authors also set out in its statement.

On the other hand, all the technologies applied in the invention in question

were perfectly ordinary in June 2001 and, although it considers that the

technical problem solved by the patent (alarm systems assembly with

Remote control via mobile phone through WAP menus) was not

specifically addressed in relation to alarm systems, it was already will date

evident to any technical area of electronic or telecommunications

applying the disclosed systems such solution to control other types of

electrical and electronic equipment, consisting of a very simple larefa that did not require great technical effort

Therefore submit the authors that the patent in question does not meet the requirements of novelty and inventive nature required by law, which determines the its nullity under Article 113, n. ° 1, paragraph a) of the CPI.

Most claim that they are commercial companies who are dedicated, there are long years, the marketing of products and car fleet management services automobiles, products developed with use of own technicians.

It follows that, in July 2011, were surprised by the news that the defendants had filed criminal complaint against several companies, including the

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authors, in which it invoked these marketed products in violation the resulting exclusive right of the patent of the 1st defendant and whose ownership exploration had been licensed to two aft.

Now, the authors never marketed any intruder alarms controlled by mobile phone, devoting himself instead to marketing fleet management systems, making the 1st to the author in 1994 and the author 2 Since 1993 these systems whose purpose is very different solution patented, first because they have the intrusion alarm functionality with interaction via phone or using WAP technology.

Owing to differences between the patented and systems developed and commercialized by the authors, although the patent defendant 1 were valid the authors were not infringing the exclusive that just result, and were forced to deal with the criminal case to them It was established as a result of that spent amounts allocated to his defense in such a process, as well as any safeguard fears that their customers come to demonstrate against the doubts raised by the defendants as to the lawfulness of the marketing of their systems called "XTraN" and "Frotcom Premium".

Thus, said conduit as a result of the dock 1 the author damage suffered in not less than EUR 25,000.00 and the 2nd value author suffered damage value not less than 20,000.00 Euros, amounts that come complain, formulating the corresponding application for compensation.

The defendant Manuel Alberto Santos came Londreira contest and deduct counterclaim against the plaintiffs, on wed! calls for the condemnation of these, jointly and severally, to pay compensation for damage to property, in amount to be determined in the final award of headquarters as well as in payment of compensation for moral damages in the amount of 75,000.00 Euros.

In addition to the matter on the active exception that illegitimate argued, the defendant advocates the rejection of the action, holding the patent  
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cause is valid, with its grant elapsed a rigorous process scrutiny by the PTO, further arguing that the products marketed by authors violate the exclusive it will entail.

Moreover, when verified the existence of products on the market infringement of the patent, the defendants, through their representative sent notifications the undertakings concerned, including the authors now, realizing that products marketed infringed that patent and inviting them to talk and seek an extrajudicial solution, to which the applicants nothing They responded.

In the face of such silence, the defendants went complaint to ASAE that after analyzing, It concluded that there was infringement of the patent and encouraged the establishment of criminal proceedings for acts included the commercialization of the systems "XTraN" and "Frotcom Premium" of the authors.

Now, if enough rapid analysis of the products concerned for conclude that do not violate the patent, as the authors argued in the petition initial, and said investigation was filed in relation to them, do not It comprises the alleged high expenditure of resources is the basis of petitioned compensation is not therefore justified in their own foundation.

In the seat of counterclaim that deducted against the plaintiffs, the defendant claims that, It noted in its favor to the patent, thought he had reserved for himself the exploration and enjoyment of their invention, through its marketing However, the authors anticipated up and placed on the market their technology products covered by the protection of the patent and the understand the ASAE ed t. ° defendant are in clear violation of the same.

Thus, by marketing as their product whose patent was third name, the authors deprived in gains from the sale of his invention.

Under patent exploitation license agreement entered into between 1st defendant and the defendant 2.3, it is forced to pay to him the amount of 1' à Rina TLV 4 85

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1 Judgment

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5.00 Euro per equipment sold, which corresponds to damage property suffered by the defendant-Counterclaimant as a result of marketing, by the authors of their products "XTraN" and "Frotcom Premium", knowing these thus infringing the exclusive right of exploitation conferred by the patent n. ° 102634 whose existence known.

In addition to property damage to it and are caused, says the meet-Counterclaimant who suffered serious and relevant moral damages, translated into large frustration and humiliation, shame and anger you feel, as a result of seeing deprived of any economic return of the patent as a result of actuating the authors.

The authors showed replica that invoke the exception of prescription-defendant Counterclaimant the right to compensation resulting from liability for unlawful acts, with reference to the facts prior to 17-09 2009, since those were notified of contestação-counterclaim on 17.09.2012, 17.09.2007 or, if it is understood that applies Top five years provided for in criminal headquarters.

Besides the matter of exception, argue the authors-reconvindas that on the facts alleged by the defendant-Counterclaimant subsequent to 17/09/2009, not cs are meeting conditions for their accountability, since the patent in question is void and therefore he can not make any claim that is based rights flowing from it, since it does not checks for any illegality on placing on the market of equipment use the same technology to solve the same technical problem (alarms for intrusion through the use of WAP mobile), to which is added that even that the patent was valid, they never put in any product with mercada the characteristics of the invention or were dedicated to the marketing systems intrusion alarm, not removing thus any unjustified advantage technology developed by the defendant-Counterclaimant.

They conclude that there was no practice of any illicit by the authors-reconvindas, apart from that it was not the conduct of these the cause of 85 page 5 dg

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alleged damage suffered by the defendant-Counterclaimant, and even if  
proved all the alleged counterclaim matter, always say that those  
They have contributed to a very small proportion for the production of  
damage invoked by simply impossible to check the criminal complaint was  
filed against 27 different companies and, therefore, to be damage  
1 of the defendant, it would not only be due to the action of autoras-  
reconvindas, improcedendo thus the counterclaim deducted.  
In rejoinder 1 0 defendant shaft work for the rejection of the exception invoked  
Right Prescription for damages resulting from civil liability for  
unlawful acts, claiming that to do so only became aware of the conduct of  
authors-reconvindas in March 2008 and with the start of criminal proceedings  
which originated in the complaint and is still going, it is interrupted  
limitation period that had started that month and year, and such  
interruption will be valid until such time as the right to compensation can  
if exercised in accordance with Article 306, n. 1 of the Civil Code, which, in  
account the principle of accession provided for in Article 7 1 of the Criminal Procedure Code  
(CPP), only occur when the offense charged or dispatch  
archiving.

order is issued-sanitizer, which was dismissed the  
delaying the exception of the illegality of the authors raised by 1 ° in the defendant  
defense, followed by the facts seiecção.

In the course of the case, and the Court has taken note that the 2 .a  
defendant had been declared insolvent, its administrator has been notified  
insolvency that has replaced one defendant, pursuant to and for the  
purposes of Article 85, no. 3 ° CIRE, to which it came nothing  
say or claim.

Held final hearing with the legal formalism obedience as  
stated in the relevant minutes, observing the procedure laid down in the New  
Process Civil Code (NCPC) by precepts strength in Article 5, paragraph 1 0  
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Intellectual Property Court  
I "Judgment

Marquis Street Frontier - Palace of Justice - 1098-001 Lisboa  
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Law no. 41/2013, of 26-06, as amended by the Declaration of Rectification n. °  
36/2013, of 12-08.

\*

II - The instance remains valid and regular and there are no preliminaries  
that fulfills know.

\*

III - Issues to decide

In the present action is to consider and decide the following issues:

- . The national patent No. 102634 is zero for lack of novelty and  
inventive step;
- if the authors have suffered damage as a result of process-  
crime brought by the defendants, which must be compensated for these;
- proceeds the exception of prescription-Counterclaimant defendant of the right to  
compensation resulting from liability for unlawful acts; and
- the 1st defendant suffered property damage and personal injuries as a result of  
marketing, the authors, their products "XTraN" and "Frotcom  
Premium ", which must be compensated for these.

\*

IV - Grounds

The following are the proven facts relevant to the decision of the  
cause:

- 1 - On 18 June of 2031, the 1st defendant filed an application for registration of  
patent, which is assigned to the request number 13684.
2. - On August 23, 2001, the 1st defendant was notified by the National Institute  
Industrial Property (PTO) to solve various irregularities  
that request.

3. - Among such irregularities was the fact that the original application was instructed only with some drawings without writing claims.

4. - The CLAIMS were presented in September 2001, with the follows:

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Claim Ac \*

1. System alarms lefcmòvd characterized by alarm unit with inteiãcrt to various sensors, actuators c programadlo by interface unit with c commicações mobile system (GSM UMTS \*. 1 TP RA) and tw are the sof system operation,

2 System chord with the re ind iv lco it l. characterized in 1st urn plate cbcuito imçres.sü 20 <Wicker) interfaces' asmes 20 {twenty) interfaces actLodmes, {1} urn RS232 interface for PC, urn interlace to the drive mtrckce with mobile communications system c an interface with the system alimcmaç & autonomous n

3. System according to reivindicadlo l wherein act software dedicated to trmtrum mobile communications, which includes monitorúaçlo functions c curtírolo alarm system.

5. ' The 1st defendant also presented, then, entitled "SYSTEM INTELLIGENT MULTI USES FOR MOBILE PHONE "and the following description:

The invention under study fits in the dc alarm systems and security domain assets, increased comfort in the home and performing many useful tasks, adding ability to automatically notify the owner, the occurrence of alarm events and others, giving you the ability to act in various ways either on the right to protect, with the order to prevent or hinder the action of the intruder, whether acting on air equipment conditioning, irrigation sprinkler, appliances, etc ...

There are several scenarios for using this system: vehicles, dwelling houses, condominiums, gardens, villas, soccer fields, tennis, etc ...

The warning device notifies the user through a call, allowing you access to various functions, notably in case of intrusion and robbery attempt car: establish a dialogue with the assailant, control windows and lights of the vehicle, cut the by fuel valve closure, can sound the siren, film and record images in support storing, transmitting the location of the vehicle (GPS or GSM interface itself - Basic location).

If installed in a building, garden, farming or other land, the system will also report to owner or authorized user, responsible for the security or maintenance that may act, depending on the situations they encounter him, according to the options open to you: drive the electric lights, sirens, video surveillance, turn on appliances, electric stove, air conditioning, sprinkler irrigation system, etc ...

As shown in the figure presented in "Summary Sheet" the system implemenlar dc is based on a printed circuit board whose major components are as follows:

- Various connectors (number depending on the complexity and system variable) to connection of sensors,
- Several connectors (number idem idem as above) to updaters bond;
- An interface of type RS 232 PC;
- An interface for power:

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- An interface to interface the system with mobile communications network;
- C • A memory processing core consisting essentially mind by a processor Family 8051 and memory programmed with appropriate algorithm for the features associated with each installation.

AdicionaSmentc has the autonomous power supply system, which in turn has one connection to a source of DC voltage 12 V which can be the battery of the vehicle if the

Installation is performed in the vehicle, or a 220 V transformer for 12V, if the installation is made in building or land.

The interface module with the mobile communications network, which needs power provided by an independent connection to the power module, also requires an interface for an appropriate antenna to the mobile communications system used.

The PC interface used to customize the information obtained in accordance with the installation made. It is by programming the sensor allocation table and actuators that makes it possible to send the owner the identification of the messages where one of the phenomena under observation also was the identification of several actuators that the operator, for menu browsing, you can use.

System operation is done through software, which implements the mobile terminal user a set of menus that provides you the choice of actions to take, and protected by a key word - "password".

6. - The application was published on December 20, 2002, the Bulletin of Industrial Property no. 12/2002.

7. - Once published the request and conducted its examination, the INPI notified the 1st defendant on 19 January 2004, as follows: "Informase V.Ex.a that the patent application referred to above, does not meet the requirements of patentability referred to in Article 55 of the Industrial Property Code, namely novelty, inventive step and industrial application. To your regularization shall:

#### CLAIMS

- Replace the claims made by others that describe specifically the subject invention. "

8 - In response to such notification, the defendant, by its form submitted with the INPI, on April 1, 2004, showed the following claims:

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1 - Alarm system with ready deterrence service (by power cut fuel, etc.), listening and interior with intruders / people in the area protect and (GPS) location, comprising a transmitter / receiver (GSM), Electronic system, sensors and actuators. these in the hardware sector

2 A system according to claim 1, characterized by a circuit with forty (40) connections, twenty (20) input signals (from any kind of sensor) and twenty (20) output (for each and any type of actuators example (relay for power cut, solenoid valve for cutting fluid, etc.) and one (1) RS232C interface programming of this electronic system, an interface to the system mobile communication and an interface to the power system

antonym  
y. System according to claim 2, characterized in software PC dedicated to the implementation of the interface with the system user alarm with ready deterrence service through RS232C

d- system according to claim 2, characterized by software dedicated to mobile communications terminals, which includes functions control monitoring and alarm system with prompt service deterrence programmed in emitter / receiver (GSM), and activated by operator of mobile services.

S system according to claim 2, characterized by a source of power to load a battery that powers the autonomous system in case of voluntary or forced cutting energy.

9. On 30 December 2004, 1<sup>o</sup> defendant made the following claims:

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#### CLAIMS

1 - Remote safety system for a motor vehicle, characterized by Mobile communications terminal (not shown in Fig.1) running

according to the GSM mobile communication system, GPRS, UMTS, or any other similar mobile communications system in which the mobile terminal has software whose features are accessible through access menus, placa electrónica de control y comunicación consiste de un Microcontrolador (6 - Fig.1), un módulo móvil que utiliza el mismo sistema que el teléfono móvil descrito anteriormente (6 - Fig. 1) y varios sensores (7 a 26 - Fig.1), actuadores (27 a 46 - Fig.1), y otros dispositivos de entrada y salida analógicos o digitales a la placa electrónica.

2 - Security System for Remote Vehicle Automobile according to reivindicación 1, caracterizado por un terminal de comunicación móvil en el que su software ha sido modificado en orden de conducir las características de un sistema de seguridad o cuyo software usual en tecnología permite el acceso al sistema de seguridad sin cambios de configuración, por ejemplo por un número de teléfono, enviando un conjunto de mensajes de texto u otros formatos estándar en un sistema de comunicaciones previamente definido en su memoria para identificar claramente la función de cada uno de los componentes de la placa electrónica que el sistema de seguridad

3 - Security Remote System for Automotive Vehicle according to reivindicaciones 1 to 2, caracterizado por una tarjeta electrónica en la que hay una recepción y transmisión de un módulo que funciona en el mismo sistema que el teléfono móvil (5 - Fig.1), en el que los dispositivos de comunicación móvil permiten la localización geográfica del vehículo en la que se encuentra la tarjeta electrónica, o esta puede ser realizada por otro sistema de localización geográfica como el sistema de GPS u otro sistema en el que la información relacionada con la localización del vehículo puede ser transmitida al terminal móvil o a otro usuario del teléfono móvil, como las fuerzas de seguridad u otras autoridades, el operador de la red móvil y los que pertenecen al mismo operador móvil y otros números de teléfono institucional o especialmente la misma red móvil, otra red móvil o una red fija.

4 • Security Remote System for Automotive Vehicle according to claims 1 to 3, caracterizado en que una tarjeta electrónica existente en el vehículo que tiene un Microcontrolador (6 - Fig. 1) permite la comunicación con un ordenador personal (PC) como se muestra en Fig.1, a través de un enlace RS232, RS485, USB1, USB2, SPI u otro que permite su programación por descarga de código ejecutable u otros programas, y la lectura y escritura de la memoria de cualquier información o parámetros necesarios para el funcionamiento del sistema o el cambio de éste (3 - Fig.1).

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5 - Security Remote System for Automotive Vehicle according to reivindicaciones 1 to 4, caracterizado por un conjunto de dispositivos de entrada y salida digital en el que el número y el tipo de dispositivos son dependientes de las características y capacidades del microcontrolador escogido para implementar el sistema, y aquí dadas como referencia Owner (D 4), veinte (20) de las cuales están previstas por sensores (7 a 26 - Fig. 1) y veinte (20) restantes designadas actuadores (27 a 46 - Fig.1). Las características de dichos dispositivos pueden ser cualesquiera siempre que sean consideradas útiles y relevantes para la naturaleza del vehículo, siempre que la tecnología escogida para la implementación de la tarjeta electrónica permita su correcto funcionamiento. At This reivindicaciones listed \* totaliade of the forty (40) devices can input and output the number and function of the devices be achieved mediante el uso del microcontrolador escogido en la implementación del sistema:

»Sentón and

7. burglar attempt detector of tachaduras de las puertas del vehículo

8. burglar attempt detector tachaduras de la capota del vehículo

9. burglar attempt detector locks the door-bagagens

del vehículo

10. Detector attempt to remove the vehicle's wheels
11. Detector lenteja breaking of glasses veto \*)
12. Detector póteoom case of kidnapping or oondutor disease
13. D and c te r \* to lack of water in the vehicle radiadordo
14. Detector lack of oil in ve la \*
15. failure detector or aromaba the brake system vaícute
13. Chamber film of air poestoiMs ■ intruder kJenbficeçéo Engine dantro
17. Chamber of htmar that possibilito the car outside of identification in CModeoofis & the

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The funotanteidedes dot actuators 36 • 46 nfc> were presented here, may be any medianle s particular needs or rçatçaçéo user preferences.

6 - Security Remote System for Automotive Velorta according to \* ratvindlceçõe 1 to 6, characterized in that a system of 'UmertsçSo of pleca electronics (4 - Frg.1). bateada the vehicle, lijado \* of the vehicle battery, or having an independent or betada recairegável n5o and which is reesrejavet. with </ n regarogamenio existing system in the vehicle itself or enlamo qué utKize the energy of the battery vefcuta, its ademador or quatquar another dizzy external energy.

7 - System Security pear Shot Veiate aoordá Motor with refirtodCsçOes 1 to 8. Cutaş characteristics previously deserte 'to postbOhem Your utteaço in benc bióveit, aemquatsquar teonotógbea atterações to AFEM attenaço of the type actuadones other sensors suitable for the type bag Property well and atteraçfto board bHcrooortnSador software elerarónlca the software, teleferteos or predefined messages in numbers temwtel mobile au still ettereções O 'SmentaçAo UFLl of the electronic board izando pútofca network or other aemertaç system & the recarregómento or the battery NSO They are existing motor vehicles.

10. - On January 5, 2005 and there are still obstacles to granting such patent, the PTO again reported the 1st defendant as follows: "Reports and if V .Ex.ade qu patent application filed on 2 0 1 0 .0 8 6 .1, published fot Property in Bulletin No 12/2002 of 2 0 0 2 2 .1 .3 1 was subject to eque exam notification phase, and does not reen p ch co oils requirements ceases n established in the Industrial Property Code. For su regularization should:

CLAIMS

- Replace the claims made by others, Fall escriv am co ncretam being the subject invention (note: sug udder itself to adoption of attached claims). "

11. \* Following such notification, the 1st defendant, 9 February 2005 carried out the replacement of claims as follows:

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■ provided forbidden RNA callus "te lo (17) and takes otlrea \* (l itin

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12. On 2 March 2005, the 1st defendant presented another version, with follows:

D IN R EIV The IC MULTIFUNCTIONDISPLAYS 1

1 - sistem smart phone for multi-use, characterized in that it consists of two modules: a security module and a WAP server module, forming urn platform for the implementation of alarm systems with intrusion notification to a mobile terminal with actions control functionality corresponding to actuators installed in the security module, remotely controlled, by handset from the person served, where the handset has software which features are accessible through access menus in the communications terminal mobile, W AP server module contains software dedicated to communication terminals furniture which implements monitoring and control functions of the alarm system.

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Intellectual Property Court

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It may be associated with a Call Center, and the security module consists of:

- With one munications Terminal M obile working according to the sistem munications with mobile GSM, GPRS, EMI'S or Tetra,
- \* An electronic circuit board im pressure control and consists unication for m icrocontrolador (6) with only one with a personal computer through a 2 3 2 RS link; a DC munications m obile module (5); an interface to the sistem to dc Feed autonomous entation; Interfaces to sensors 20; 20 and interfaces to actuadorcs;
- \* An antenna;
- sensors and actuators;
- resident control software on the circuit board im pressure;
- \* Softw are for PC that implements the functionality of the management interface Printed circuit board.

2 - S istem multipurpose smart by telem obile according to claim Is, characterized in that the sensors and their interfaces include a tentative detector Arrom of Bam then locks the vehicle doors (7), attempted detector Arrom Bam then the vehicle locks the bonnet (8), the tamper detector Vehicle tailgate locks (9), attempted detector to remove the wheels of Vehicle (1 0) attempt to break detector glasses of the vehicle (1 1), detector panic in case of seizure or disease conductor (2 1), DC detector lack of water in vehicle radiator (3 1), lack of oil in the vehicle detector (14), fault detector, or Anom sistem alia, in the vehicle braking system (15), cam ara that enables the shooting identifying the intruder in the vehicle (1 6), cam ara that enables the shooting identifying from outside the vehicle in case of collision (7 1) and other sensors (18 to 26).

3 - sistem multipurpose smart by telem obile according to claim Ia, wherein the actuator and its interfaces include an audible alarm event of an attempted break-in, tampering or theft of the vehicle (2 7), opening doors (2 8), door lock (29) with the cutting circuit bustivel (3 0), the circuit section Electric Ignition (3 1), then bloqueam direction of the sistem (32), then the bloqueam sistem the pedal (33), which allows playback speaker in the vehicle interior the user's voice comprises the mobile terminal (34), which enables the loudspeaker playback on the user's voice of the vehicle's exterior that features the handset (35) m icrofone that enables the reproduction of the voice of the intruder or sound inside carrier to the mobile user terminal (3 6) and other actuators (37 to 46).

4 - system for intelligent multi-purpose telecommunication according to claim 1  
3, wherein an electronic board where there is a reception module, and

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Tribunal Propriedade Intelectual

1 Judgment

Rua Marques de Almeida - Palácio da Justiça - IWS - Lisboa - Portugal

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transmission running on the same system of mobile communications terminal  
mobile (5), where the mobile communications module allows the geographical location  
the motor vehicle where said electronic card or this  
location can be effected through another geographical location module  
as the GPS system or another system in which the information concerning the location  
geographical vehicle can be transmitted to the mobile user terminal or to another  
mobile terminal desired by the user, such as DC or other security forces  
authorities, the mobile network operator to which the mobile terminal belongs and module  
vehicle electronic or other institutional or private telephone number  
same mobile network, another mobile network or another fixed network.

5 - Intelligent System for multi-use mobile phone according to claim 1,  
characterized by a dc power system circuit board (4), located in  
vehicle, connected to the vehicle battery, and having a rechargeable battery or standalone  
and not being this rechargeable, recharging with an existing system in itself  
or external vehicle that uses battery power of the vehicle, of your alternator or  
any other external power source.

6 - system intelligent multi-use by mobile phone according to claim 1,  
implemented in real estate, without any technological changes beyond  
changing the types of sensors and actuators to other suitable type well  
property and changing the microcontroller software for circuit board and  
telephone numbers or predefined messages on the handset or changes to  
power electronic card using the public network or other system  
supply or battery recharging not existing in motor vehicles

13. - In the examination report to 03.04.2015 and date search date  
of the surveyed claims 02-03-2005, contains the EPODOC based  
data searched and how relevant documents: W 00141408, dated  
Posted 07/06/2001 (category A - prior art) and CLAIMS  
Related 1-6; WO0221225, with the date of publication 14/03/2002 (category  
A - prior art) and related CLAIMS 1-6; and US4905271, with  
publication date 27.02.1990 (category A - prior art) and CLAIMS  
Related 1-6

14. - On March 4, 2005, the PTO issued the order for grant  
Said patent national invention, which has been assigned the number 102634.

15 - The decision of grant given by the INPI was published on 29  
April 2005, in the Industrial Property Bulletin no. 4/2005, which appears in the  
remarks that "the process has changed in the course of examination."

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Intellectual Property Court

1 Judgment

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16. The majority of alarm systems is on a date prior to 18  
June 2001, characterized by the integration in the same module, sensors, and  
actuators, although the majority of such alarm systems did not use  
then mobile media with data transmission.

17 - This is the basis of all alarm systems (intrusion and others)  
that are on the market since at least the 90s.

18 - On 18 June 2001, the WAP server module was a  
known component of any technician in the telecommunications area or  
information technology.

19 - WAP Protocol ("Wireless Application Protocol") is a protocol  
standard, known to those skilled in this area from at least 30 April  
1998 publication of version 1.0 of this standard.

20 - The Protocol is due to open specifications,

accessible to the general public.

21. - In the magazine "Infoworld" of 29 November 1999, available at Internet at <<http://tinyurl.com/7y3j9zy>>, the sale was announced-a WAP server for the Finnish manufacturer Nokia ("Nokia WAP Server 1.0").

22 - The implementation of modules WAP servers was a technical dominated by the majority of experts in the field, on June 18, 2001.

23. - The phone was also in mid-2001, a technology current and commonplace.

24. - To this date, there were on the market many mobile phones supported WAP technology.

25. - Since at least January 1997 are known solutions alarm for home and car, with the possibility of alarm notification by mobile phone.

26 - In January 1997, was published in Korea for a patent sponsored by LG Electronics Inc., for a "Method of protection Theft cars using wireless phone. "

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Intellectual Property Court

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27. The technology used to establish between the user and interaçãõ the car alarm was the phone.

28 - not used, however, the WAR protocol, but the multifrequency bitonal (DTMF).

29. - On 27 August 1999, a New Zealand newspaper reported success commercial M2 Technologies, stating that "The company was also contracted to produce an alarm system for automobiles, again to South Africa, which lets you call a lost or stolen car and order to switch off or determine gas levels through a GSM phone. A global positioning system (GPS) will locate the vehicle".

30. - Also in 1999, the Swedish manufacturer Ericsson announced to market your vision for the remote control of electronic equipment household, through the equipment "e-box".

31. - In a document prepared at this time, that company describes the technical architecture of such a system which allows binding of any domestic equipment for remote control purposes via PC or mobile phone.

32. - A final course work a student of the Institute Technical (1999/2000), described an alarm management system and network equipment operation, via mobile phones with abilities WAP.

33. - In September 2000, the website <[gsm4u.cz](http://gsm4u.cz)>, with domain in the Czech Republic publicized the sale of an alarm system called "Car Alarm GSM 500", describing it as follows: "Control your car through GSM global network, from your normal mobile phone. Mobil-Control GSM-500 warns, within 6 seconds on any undesired manipulation of its vehicle (shock, movement, door open, etc.). Several optional features such as listening or remote engine shutdown, etc."

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Intellectual Property Court

1 Judgment

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34. In the cases reported in 29 and 33, did not refer to the use of WAP as data transmission protocol.

35 - In December 2000, the Federal Trade Commission (authority regulatory of the United States) organized an event called "WIRELESS WEB WORKSHOP" ("Working Session on the network without

Wires ").

36. - In this workshop, the technician William K. Bodin, IBM labs, presented solution a remote control of electric and electronic, having been made a demonstration of a solution via interaeração WAP mobile.

37. - On March 20, 2001, Swedish companies Melody Interactive Solutions Nordic AB and AB Alarm announced by press release that would present to the public at the annual CeBIT in Hanover, a product that It consisted of an alarm containing a WAP server soaked.

38 - alarm that it could be used in real estate, but also in industrial equipment, automotive and consumer equipment.

39. - The user could interact with the alarm by mobile phone, ordering various commands, such as opening and closing doors or the control various other equipment.

40. - The companies announced that after the demonstration at the fair CeBIT2001 from 22 to 28 March 2001, would make the product available to public, from May of that year.

41. - The CeBIT is one of the largest fairs of electronics and telecommunications, being held annually in Germany.

42 - In this fair participate as exhibitors, Portuguese companies.

43. - It is customary that this fair is visited by businessmen and technicians Portuguese of electronic and telecommunications areas.

44. - The 2001 edition of that fair had 800,000 visitors.

45 - On June 7, 2001, was published a patent application presented at the World Intellectual Property Organization (WIPO) by Págin to 21 8 5

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1 "Judgment

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Swedish company Ericsson (PCT / SE200 / 02399 - WO / 2001/041408), which claims priority 01.12.1999, designated "A device and method for operating an electronic utility device from an apparatus portable telecommunication ".

46. - This patent described how could be Controlled an electronic utility device from a mobile phone via WAP protocol.

47. - The concrete examples given in this patent application were the a vending machine (vending machine), a camera filming portable (digital camera) and a flat, presenting as the Fig.1 following drawing, for which is explained in the description that it is a schematic illustration of a WAP mobile phone that can be used to access the Internet to make calls through services mobile telecommunications (voice, data and fax) and to access, control and operate a variety of electronic utility devices through modules autonomous WAP server:

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48. - 18.6.2001 In any technical area of electronic or telecommunications easily transpose the description given in said patent at 45, 46 and 47 for the scenario interaeração with an electronic device placed on board a car, from a WAP phone.

49. - On 14 March 2002 was published patent application (PCT / DE2001 / 002 468) formulated together by the Vodafone AG WIPO on a "remote monitoring method home electrical installations

are provided with sensors and actuators via a mobile radio terminal. "

50. - In this patent describes one method capable of acting on domestic electrical equipment by mobile phone, through a WAP server or another mobile communication technology, and the characterized by the independent claim "both sensors, as the actuators can be remotely controlled through a connection wirelessly from a home control unit, wherein activation this home control unit is made via a mobile radio network and contains the commands, queries and settings such as alarms triggered by the terminal, which are controlled by user by means of the mobile radio terminal via at least one user interface intuitive installed on the network. "

51 - In 2003, an article was published in the journal Computer Networks n ° 42. (Pp. 493-502) entitled "System integration of WAP and SMS for home network system "(" Integration of WAP and SMS system for networking Domestic ") in which described in detail a technical architecture that It allows the remote control of home automation systems (including alarm) via phone.

52. - The authors are commercial companies engaged in the marketing of products and car fleet management services automobiles.

53. - The 1st author sells the product called "XTraN".

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54.- The 1st author has been developing since 1994 a management system fleets, whose origin dates back to a research and development (R & D) co-financed by the European Union, called "CARGOTRACK".

55 - In 1995, 1 the author celebrated with IAPMEI a contract to development of national R & D project named "XTraN".

56 - In projects specified in 54 and 55 was already contained part of the principles and techniques of the product "XTraN".

57 - which has been marketed by the 1st author since 1996.

56.- product that developed by technicians of the 1st author.

59 - The first major customer product "XTraN" was the company CTT - Correios de Portugal, SA, which, in 1996, acquired in order management of its vehicle fleet.

60. - The fleet management system "XTraN" has as one interface computer or a sm arthpone connected to the Internet.

61. - The system "XTraN" never used the WAP technology.

62. - The 2nd author is a company that has, among its employees, some of the pioneers in Portugal in vehicle tracking technology.

63. - The Engineer Valerio Marques was linked to the Institute Technical and promoted, from about 1996, some of the first systems location of deployed vehicles in Portugal, namely through the QUADRIGA - Telematics AND COMMUNICATIONS, SA

64. - In 2008, he founded the 2nd author, who sells the product called "Frotcom Premium", also a fleet management system.

65. - Developed by technicians who collaborate with the 2nd author.

66 - Control System "Frotcom Premium" is made through personal computers or sm artphones connected to the Internet.

67. - The system "Frotcom Premium" does not use WAP technology.

68. - Users of "Frotcom Premium" have access to the system through computer or sm artphone connected to the Internet, as is common practice of vehicle tracking systems for professional use.

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1 Judgment

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69 - Systems "XTraN" and "Frotcom Premium" serve essentially for monitor car fleets via geolocation (GPS).

70 - Such systems include a management features, particularly suitable for activities such as the transport of goods, transport passengers and rent-a-car.

71. - The defendants wrote letters to the authors, again and dated of 06-03-2008, saying that with the marketing of products "XTraN" (the 1st author) and "Frotcom Premium" (the 2nd author) were violating the patent n. ° 102634 and inviting them to talk and to seek an extrajudicial solution.

72. - The authors sell products "XTraN" and "Frotcom Premium" knowing the existence of the patent of the 1st defendant and, despite knowing this patent carry out such marketing.

73 - On April 15, 2009, the 2nd defendant complained to ASAE against authors and 25 other companies, claiming infringement of the said exclusive national invention patent n. 102634 °.

74. - That complaint led to the crime investigation No. 201/10 of 3TAPVZ. Services Public Prosecutor of Povoia do Varzim.

75 - Administrators Fernando Moreira, of the 1st author, and Valerius Marques, the second author, were made defendants in this survey.

76. - The authors present exculpatory evidence in that No investigation. 201 ° / 10.3TAPVZ.

77. - Following the criminal complaint referred to in 73 and 74, the 2nd author through its employees, spent time collecting information and Analysis Pat. No. 102634, for its defense in criminal headquarters.

78 - The authors hired lawyers for his defense in the process criminal.

79.- The process no. 201 ° / 10.3TAPVZ was given order of filing by prosecutors and required the instruction of opening in 1st defendant now, about what fell order, issued on 20.02.2014 by Judge Education, reject, by legally inadmissible, said application Agin P 2 8 5 5 cie

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initiation of an investigation order has not become final, the date of Close of debate in the present case.

80. - On 10 February 2012, the authors sent letters to the defendants, looking heckles them for these to withdraw the complaint, telling them to be clearly lack foundation of it.

81 - The defendants answered nothing such communication.

82. - HI. "Defendant is dedicated to inventive step.

83. - Part of a Inventors Association, called NLL and I. abbreviated "N3i".

84 - 0 15 defendant had three appearances at the International Exhibition of Inventions Geneva, which brings together in its annual fairs inventors and inventions from from all over the world.

85 - The 1st defendant received the gold medal at the Geneva Motor Show 2005 the "Alarm system for motor vehicles" referred to Pat. No. 102634.

86 - 0 1st defendant received a vote of congratulation for the premium referred to in 85, the Municipal Assembly of Oliveira de Azeméis, the municipality of its residence.

87 - Such prizes were published in newspapers and television.

88 -. Since the end of 2003 that the patent No. 102634 has attracted attention.

89. - Since that time the press reported the invention of the defendant, referring to its utility and innovation.

90 - The invention was the subject of many articles in newspapers and interview in the TV show, which made known the invention and the 1st defendant.

91 - Keep the 1st defendant depends on the marketing of products establishing, as part of its inventive step.

92 - 0 1st defendant told obtain gains from the sale of "SYSTEM INTELLIGENT MULTI USES FOR CELLPHONE obile "which allowed him to keep and devote themselves to the development of their creations.

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1 Judgment

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93 - . On June 9, 2007, the 1st defendant concluded with the 2nd defendant contract of the patent operating license, with a view to marketing the product with respect to patent.

94. - On July 26, 2007, that was endorsed registration license exploitation in favor of the 2nd defendant.

95 - Under the contract referred to in 93 and 94, the 2nd defendant made himself pay the 1st defendant the amount of 5.00 Euros for each sold equipment.

96. - Despite having signed with the 2nd defendant that contract, does not achieved commercial success to stay in the market.

97. - The 2nd defendant did not pay the 1st defendant the amounts relating to the abovementioned contract

98 - Contrary to what expected, the 1st defendant received no return investment of time and money in the development of the "SYSTEM INTELLIGENT USE BY MOBILE MULTI "and the registration Pat. No. 102634.

99-0 1st defendant passed and passes needs, depending on the times help from family and friends for support.

100. - As a result of the situation described in 96, 97, 98 and 99, the 1st felt guilty and feel shame, frustration and disturbance.

101. - By judgment of 28.05.2012 in Case no.

598 / 12.0TYVNG, 2 of the Judgment of the Court of Commerce of Vila Nova de Gaia, which became final on 16-07-2012, it was declared the insolvency of the 2nd defendant NEW BEGIN, LDA.

\*

The constant of instructory basis, not proved the following facts:

/.- Still in 1999, it is published the final work of that course

32 in that (cf. 17 in fact instructory base);

In October 2002, were made available on an Internet site the technical instructions necessary for anyone curious in the matter could build a remote control system of any electronic device,

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by phone, by sending SMS messages (see 32 that the base instructory);

///.- the end of 2002, interventions were published in the 4th Symposium International Mobile HCI 2002 held in Pisa, Italy, from 18 to 20 September 2002 (cf. instructory that the base 33);

iv. - In this symposium, the remote control project was presented home systems (including alarm) through the WAP technology (cf. fact 34 instructory the base);

v. -. In 1993, Eng Valerio Marques was director of the Robotics Center Higher Technical Institute Signal Processing (cf. fact that 49 of the base instructory);

v i- system "XTraN" does not have to interface the phone and control the system "Frotcom Premium" does not telem through obile (cf. 46 and 54 facts



the instructory) basis;

vii. - Notwithstanding the results proved under paragraphs 60, 66 and 68, all the vehicle tracking systems for professional use have practice indicated that the common point 68 (cf. 57 that the base instructory.);

viii. -. Notwithstanding the results proved under paragraph 70, features management are especially suitable security forces (cf. 59 in that instructory base);

IX.- In July 2001, the authors were surprised by the news that the defendants have filed a criminal complaint referred to in 73 and 74 (see fact 60 instructory base);

X.- The first author, through its employees, spent in collection information about this matter in the patent analysis and defense headquarters criminal not less than 100 hours per employee (see the base 61 that instructory);

X /.- Notwithstanding the apparent proven under no. 77 °, the time spent 2a the author was not less than 100 hours per employee (cf. the fact that 61 instructory base);

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1 Judgment

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xi i - time that could not devote to other tasks that could bring commercial gains to the authors (see that 62 of the instructory base).

xiü- was in March 2008 that the 1st defendant had knowledge of the marketing, the authors of the products "XTraN" and "Frotcom Premium" (cf. 64 instructory that the base).

x / V- The maps referred to in proved that 71 were sent to the authors (cf. 65 instructory that the base).

XV - no statement of fact x / V. impairs the rationale and consequently proves that the constant n. 66 ° instructory basis.

Notwithstanding the fifteenth i- results proved that under no. 89 °, the recognition the press has made innovation and usefulness of the invention had the intervention of qualified technicians (cf. fact 70 of instructory base).

xv ii - For not stand competition from large companies, as are the authors, with the sale, the same, the products "XTraN" and "Frotcom" (cf. 77 and 78 acts instructory base).

XV ///.- Notwithstanding the results proved under n. ° 100, which was consequence of the actuation of the authors who passed the 1st and passes defendant needs (cf. fact 81 of instructory base).

x / X.- Notwithstanding the apparent proven under no. 100 °, which was result of an act of the authors that the 1st defendant suffered and suffers great frustration and humiliation (cf. fact 82 of instructory base).

Notwithstanding xx.- results proved that under no. 100 ° 1 of the defendant ashamed, when approached about his patent, which furor caused (cf. fact 83 of instructory base).

xx /.- Notwithstanding the results proved under n. ° 100, the defendant feels often angry, which disturbs his sleep and affects sometimes the interaction with others (cf. 84 and 85 of the facts instructory base).

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Slogan that the junction, by the authors of the document contained fis.1201 to 1217 (ref.3 20982), it is after the close of the discussion in P a 2 g in 8 9 5

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this case, being the very subsequent document to that date [copy

Judgment of the Court of Appeal of Porto on 26 November

2014 in criminal proceedings (instruction) 201 / 10.3TAPVZ], depending on the

court did not respond to even supervening factual headquarters (cf. Article 611 ° NCP).)

Consigna even if the facts 5, 13, 33, 47, 50, 60, 66 and 68, with extension that shows calculated, were considered as the court complement and realization of what the authors had claimed, and Because the result of the instruction (Article 5, no. 2 °, b) NCP), more namely the documentary evidence duly attached to the case, in relation to which the parties have had an opportunity to comment either at headquarters exercise as contradictory to such documents, whether at the final hearing, the confront witnesses with the content of some of these documents, Motivation of that decision

In addition to what was presumed based on the selection order of the matter of fact, the formation of the conviction of the remaining actuality, the Court was based on the documents in the case, either by the authors or 1 the defendant or with officially (document fls.1174 to 1177) pursuant that in particular the following statement shall set out to.

It is still based on the testimony of the following witnesses interviewed in final hearing:

a) Pedro Rafael Vítor Boniface, electrical engineer and professor university, exercising teaching at Instituto Superior Técnico (1ST), from 1983, where he teaches the course of Electronic and Computer Engineering. 1 the author knows, as this is associated INESC, with which witness started cooperation after completing the course and was administrator said Institute, from 1988 to 1997 and the 1st author, in 1996/1997.

As can be read on its Internet page

(<[Http://www.inesc.pt/pt/inesc-pt/o-inesc](http://www.inesc.pt/pt/inesc-pt/o-inesc)>), "INESC - Engineering Institute P agin SO tie 8S

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Systems and Computers - is a private non-profit association of public service, dedicated to education, incubation, scientific research and technology consulting, "was established in 1980 and operates within the framework of the relationship University - Industry, and the 1ST one of his associates.

This witness said he familiarizada with the process of getting patents as it has patents to his name and has been expert in a case concerning the patent infringement in the field of electrical engineering who ran in terms of the Court Trade, having read the patent at issue, did not know of before this case.

Within the activity developed in INESC having the led al working group "mobile" in 1994/1995, collaborated

l directam one with the author in the project called "CARGOTRACK" (cf.

Indeed 54), and before that, when the witness joined INESC by around 1988, he participated in a pilot project called "MONICAP" intended the monitoring of fisheries, which was very successful and was the genesis of project (land) "CARGOTRACK" and then the system "XTran".

In view of the teaching activity developed as and how 1ST INESC investigator knows the technologies related to systems issue in these notices (alarm systems, in general, the first patent system ° defendant and plaintiffs fleet management systems, in particular the "XTran" and its predecessor "CARGOTRACK ").

b) José Renato Ferreira Madeira, electrical engineer who exercises technical director of the functions of the 2nd author, since its establishment in 2008.

He reported having participated in 1998/1999 in conferences relating to WAP, system described generally the technological route to the use of W AP as standard on mobile phones, said the development and characteristics of systems "Frotcom" and "Frotcom Premium" marketed 2 by the author (and that was one of the creators of "Frotcom" in 1997, then to QUADRIGA service company), referred to his visit to the fair CeBit in 1998 and alluded to information research activity carried out following the

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criminal complaint brought by the defendants. During his cross-examination in court was- you displayed the document n 0 15 (Melody / Nordic Alarms), who read, and this It supported about the system described in that document presents characteristics similar to those of the patent (sensor operation / actuators with use of mobile with WAP technology).

c) Mário Serafim Nunes dos Santos, a retired professor from 01-01-

In 2014, having held teaching assignments at 1ST, 1974 to 2013, in the course of Electrical and Computer Engineering, specializing in telecommunications, with two books published in the area and several articles in magazines and speeches at conferences.

This witness said he was familiar with the process of getting patents as it has patents to his name, having consulted the dossier the patent at issue, did not know before the proceedings.

d) Carlos Julio Ferreira Lourenço, the communications engineer service of the US company, for which it performs the sub-director functions shopping, and, from 2010 to 2013, he was responsible for the business unit OPTIMUS company, which involved the data communication service and in this context maintained contacts with the authors, while companies They worked with that carrier.

This witness was reported that management products VODAFONE (Then TELECEL), 1995/1996 we at which time the carrier was approached by some companies (national and international) to collaborate in providing vehicle tracking solutions, intending to put Products of this sort in the market, remembering that such solution existed then in the South African market. The system worked with using your mobile network for information transmission for a given center (computer Central), with features including vehicle detection in operation and its location (by area). At the time these systems were expensive and only became more attractive in commercial terms with the introduction of 3G technology, the sm arphones offer a more interesting interface for the user.

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1 Judgment

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However, conceptually, as with SMS technology it was possible to act a command (and not only receive information), for example an alarm, there bidirectionality / interactivity since 1996.

More reported that in 1996, while in the service of so TELECEL, maintained contacts on the system "Frotcom" (vehicle location) with QUADRIGA the company and is also around this time that the ESC IN you It presented its own product also for the vehicle location.

He explained the main features and operation of the said vehicle location systems and the use by them, of a module of mobile communications and GPS, which transmits the information to a center to which the client user has access.

e) António Pedro Marcelino Simoes, electrical engineer to 1st service author, since 1993, in acting for area development.

It sets out the main characteristics of alarm systems sensors and actuators and the remote action function, supporting that they were already present in such systems, from the second half of the 90 W AP explained the technology and how it was overtaken by WEB when it came. Reported having visited the fair CeBIT, in which noted the participation of Portuguese as exhibitors and visitors (In greater numbers on this quality). He explained the development and System features "XTran" marketed by the first author from the

first project called "CARGOTRACK", set out the services  
TECMIC by CTT, in 1996 and 1997, involving respectively the  
Car monitoring (with the product "XTraN") and monitoring  
vending machines seals.

f) Zefferino John Peter Pires, which was QUADRIGA company employee,  
from 2001 to 2004, which led to the creation of 2, the defendant (said that this is  
that a spin-off). While in the service of QUADRIGA installed products  
"Frotcom" in several companies, particularly in the north, these products

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The main features of the witness described at the hearing, referring  
who did not use WAP technology, using GPS (for function  
location), GSM or SMS in fear (connected to the computer installed in the  
central).

g) José Emanuel Pereira Ramos Garcia, researcher on  
electronics and telecommunications, with bachelor and master's degree in engineering  
electronics and telecommunications from the University of Aveiro, who worked  
for the 2nd defendant, from 2008 to 2010, acting for the respective department  
research and development, having worked there in the development of  
new projects.

The witness met the 1st defendant when he worked at the Institute of  
Telecommunications in Aveiro (institution from the University of Aveiro and  
PT Innovation, among others), lying at the time to carry out the  
Masters in mobile telecommunications and, therefore, dedicated to the study and  
research in this area. The 1st defendant sought the Institute of Telecommunications in  
sense of being supported in the preparation of the elements to be presented with the IN PI,  
in view of the patent registration, and at first it was  
assisted by a fellow Witness, who collaborated in the drafting of  
their application, including to claims. Already after the application submitted  
is that the witness went to assist the 1st defendant, closely following the  
process relating to said patent, under which the information provided  
INPI and helped detail the subsequent versions of the description and  
claims. With reference to this context, explained the features  
patent, the aspects that date gave it novelty, having reported that  
there was then on the market solutions with the use of mobile communications  
that would allow the operation of alarm systems in the mold  
contemplated in the patent in question. In thirst for confrontation with the  
R ro R d witness afael B on ifácio Vitor clarified that, in 2001, was  
technically possible to use the mobile communication systems in  
Operating alarms, but the market did not exist such solutions.

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Because of the maintained contact with the 1st defendant in a first step  
under the activity carried out at the Institute of Telecommunications and, subsequently,  
as an employee of the 2nd defendant, has been closely monitoring the situation in that  
defendant, knowing the financial difficulties that this has gone through and its  
state of mind, address the problems it has faced in marketing  
the patented system.

h) Joaquim Dario Neves Henriques, accountant, knows the 1st defendant from  
this came to him in his office and accounting advice  
financial to work towards patent registration in question, and  
both are part of N3I Association, founded in 2007 / 2008. He spent  
maintaining contact with said defendant, with the pair of public disclosure has been

given to his patent, the reaction of the same for the marketing of products says violate its patent and emotional consequences and psychological in such a situation.

i) Faria de Oliveira Antonio, a friend of the 1st defendant with which crashed knowledge about seven years following a news broadcast on television concerning an invention for the restoration, from what He made contact with the same and developed a friendly relationship.

j) Mário Rui Correia dos Santos, a telecommunications engineer and entrepreneur, and founder of the company "W AVECOM", located in Aveiro. He worked in the Telecommunications Institute (which are the founders University of Aveiro, University of Coimbra and the 1ST and the company PT), the period in 2001 and 2005, responsible the interface research / companies in the area of wireless communications, having been contacted at the time the 1st defendant be given in order to support it in formulation of the patent application in question, this support was provided by that witness, helping to make the wording of the patent based on the concept that was the creation of the first defendant, having also collaborated in responding to notifications the IISPI in the claims wording of thirist. also accompanied the 1st

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defendant of meetings that it had with the OPTIMUS and TELECEL operators, and in order to create a system with the features of the patent.

Under the support it gave to the 1st defendant in formulating headquarters the patent application, did research and found nothing on the market which corresponds to the invention in question, which already included the functionality of mobile Internet, although based on the WAP format, which was the system then existing and had limitations.

The purpose of the research carried out indicated that the Institute for Telecommunications was already in 2001, a reference entity in the field of investigation and development. He clarified, however, that has not done a study exhaustive of existing solutions on the market (solutions that allow act remotely on alarm systems), or had to do, because it was up INPI perform the verification work and analysis of patents incompatibility possibly presented to the system 1 of the defendant intended patent.

The witness described the features and functionality of the system Constant patent and alluded to aspects of fleet management systems that, in its view, have any connection with the first.

k) Mário Jorge burst Oliveira, a lawyer for two aft in the period understood in 2006 to 2011, and as such endeavored towards the presentation of the criminal complaint against the authors and now other companies (27 companies in total) and, before that, the cards produced copies of which were together 1 of the defendant as docum ents Nos 1 and 2 (fls.475 478), wherein the testimony given at the hearing girded to these two aspects, particular the preparation of these charts with your submission been borne by the 2nd defendant.

l) Emanuel Garcia da Conceição, computer technician, friend of the 1st defendant, a few years ago and has been managing partner of the 2nd defendant, since its establishment until the end of 2012, and sold its share before the insolvency declaration.

Said the celebration of the operating license agreement between the 1st and the 2nd defendant  
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aft and the situation detected and understood that constitute infringement of the patent, leading them to pursue criminal cons the authors and other companies.

m) João Miguel puddles Cruz Marcelino, agronomist, exercises

The technical features of the patent examiner PTO service since 1993 within which intervened in the administrative procedure concerning Pat. No. 102634 in particular doing its examination and involved research, the defendant driving the notices for the correction of the claims and issuing final opinion towards its concession, an intervention that is documented in the INPI certificate that the author joined as document n. ° 5 (Fls.74 171) and process patent certificate sent by that Institute and attached by line.

Note also that this witness clarified that followed the usual procedure of that Institute and searched the database EPODOC (Patent database), which is used by his colleagues examiners of the European Patent Office (EPO), and did not agree to other documentary databases or consulted or sought documents scientific, books, encyclopedias, technical standards, brochures or information relating to seminars and other events.

They paid part of statements from Fernando Rui Moreira The liveira (in the legal representative of the first author), electrical engineer, shareholder of the 1st author, since the late 90s, and chairman of its board of directors, Valerio Manuel Machado Marques (acting legal representative of the 2nd author), Electrical Engineer and Director General the 2nd defendant, since its inception in 2008 and was part of the company QUADRIGA, in said case, and Manuel Santos The Iberto Londreira (1st defendant) inventor and proprietor of the patent no. 102634 °.

\*

Specifically, with reference to the proven stroke, the Court formed its conviction in the following ways:

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- Facts 1, 2, 3 and 4 - settled matter as set out in points A, B, C and D order of selection of the facts.

- Fact 5 - The presentation of the above patent, such matter was based considered from the point E to the order of selection of raw fact that. With regard to the description of patent document follows the same 5 fls.4 constant and the certificate in dop rocess dm tra sent by TIVo INPI and attached by line.

- Facts 6, 7, 8, 9, 10, 11 and 12 - settled matter as set out in points F, G, H, I, J, K and L of the order of selection of the facts.

- Fact 13 - Based on the contents of the INPI p rocess of certificate joint by the author as docum ent n. ° 5 (specifically, fls.76), which also figure fls.27 EC rtidão p rocess adm in tra tive sent by that Institute and attached by line (examination report referred to the fact that in question).

- Facts 14 & 15 - settled matter as set out in the points M and N order of selection of the facts.

- Facts 16 and 17 (n.05 1 and 2 instructory basis) - Based on the testimony Peter Rafael B of witnesses on lfa V c e r lto, M ary Serafin dos Santos Nunes and Carlos Ju lesson Lourenço Ferreira, with the reason of science above indicated. The first witness noted that the integration of sensors and actuators corresponds to a basic construction of alarm systems, second indicated that knows alarm equipment with the features sensors, actuators and remote actuation via communication lines from 1993 or 1994, alluding to their colleagues who already had the time of such systems and well so long as there are in mod s (from 90 years)

It is possible, although more rudimentary mode (low-speed), make a remote actuation. For its part, the said third witness for around 18 years which is common to alarm systems work with sensors and actuators. It should be noted here that the inclusion under no. 16 ° segment factual "although the majority of such alarm systems not then would use

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mobile media with data transmission, "results from the compatibility of such factuaiidade to the time to which it refers, in that data transmission in mobile communication systems still I found at an early stage, and the WAP became known in the late 90s and published version 1.0 of this standard on 30.04.1998 (cf. fact 19).

- Fact 18 (No. 3 instructory basis.) - Based on the testimony of witnesses Pedro Rafael Boniface Vitor, Mário Serafim dos Santos Nunes, Carlos Ju lesson Lourenço Ferreira, José Emanuel Ramos Pereira and Garcia Mário Rui Correia dos Santos, with the reason of science above, together with the fact that the content 19, the result of demonstration elements set out in the explanatory memorandum (see below).

- Fact 19 (No. 4 instructory basis.) - Based on the testimony of witnesses Pedro Rafael Boniface Vitor, Mário Serafim dos Santos Nunes, Carlos Ju lesson Lourenço Ferreira, José Emanuel Ramos Pereira and Garcia Correct Mário Rui dos Santos, with the reason of science above, conjunction with the information available on the WAP Forum web site (<[Http://www.wapforum.org/what/technical\\_1\\_0.htm](http://www.wapforum.org/what/technical_1_0.htm)>) indicated in document n. ° 19, presented by the authors and next to fls.336 to 345, with translation to fls.789 to 793 [article entitled "System integration of WAP and SMS for home network system "" Integration WAP and SMS systems for home networking " Constant publication Computer Networks, n. ° 42 (2003)], and the document n. ° 12, presented by the authors and next to fls.186 to 255 (final year project 1NT student that the witness Mario Serafim dos Santos Nunes know for reading, although a long time ago, and that and the witness Pedro Boniface V itor Rafael identified as having been guided by the teaching of 1ST and colleague of the same, stated in that work).

- Fact 20 (No. 5 of instructory basis.) - Based on the testimony of witnesses Pedro Rafael Boniface Vitor, Mário Serafim dos Santos Nunes, Renato José Madeira Ferreira and José Emanuel Pereira Ramos Garcia, P agin 3 9 8 5

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in essence, they explained the development of protocols such as now in question, open discussion that checks over such development and end result when it is closed (completed) and made in standard to be used by the industry.

- Fact 21 (No. 6 instructory basis.) - Based on document content n. ° 8, presented by the authors and next to fls.174 to 175, with translation to fls.665 (Article entitled "Nokia to ship W AP Server 1.0" / "Nokia announces launch WAP 1.0 server ", contained in the publication" World Info "and that can be available on the Internet at <<http://tinyurl.com/7y3j9zy>>, as indicated in fact in question, and that can be read as a publication date 29 November 1999).

- Fact 22 (No. 7 instructory basis.) - Based on the testimony of witnesses Pedro Rafael Boniface Vitor, Mário Serafim dos Santos Nunes, Carlos Ju lesson Lourenço Ferreira, José Emanuel Ramos Pereira and Garcia Mário Rui Correia dos Santos, with the reason of science above, together with the content of docum ent no. 8 °, mentioned above.

- Fact 23 (No. 8 instructory basis.) - Based on the testimony of witnesses Pedro Rafael Boniface Vitor, Mário Serafim dos Santos Nunes and Carlos Ju lesson Ferreira Lourenço, with the reason of science above, it being understood that the reference is in fact likely to be considered that known, being generally known (Article 412 °, n. ° 1 NCPC).

- Fact 24 (No. 9 instructory basis.) - Based on the testimony of

witnesses Pedro Rafael Bonifacio Victor, José Renato Ferreira Madeira, Carlos Ju lesson Ferreira Lourenço, Pedro António Simões Marcelo and Jose Emanuel Pereira Ramos Garcia (with reference to the statement made in thirist for confrontation), the ratio of science above.

- Fact 25 (No. 10 instructory basis.) - Based on the content

Documents Nos 9, 10, 11, 12 and 13, presented by the authors and together fls.176, translated to fls.668 (KR970000569 application for patent, 13-01-1997 "Car burglar protection using wireless telephone " /" Protection Method Page 0 of 4 HS

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anti-theft car via mobile phone "), 177-188, with the translation fls.671 676 (notice of the publication on Lin and ICT News - NZ Herald News of 27 August 1999, entitled "High-tech ideas need nurturing and seeding" / "The high-tech ideas that have no ear and cultivate "), 179-185, with the translation fls.678 685 (article entitled "Ericsson's e-box system - An electronic services enabler "/" The system e-box Ericsson - An enhancer Electronic Services, "published in Ericsson Review, no. ° 1, 1999) 186-255 (End of year project 1999/2000, directed by Ricardo Pereira and oriented by Teresa Flow, 1ST, Department of Computer Science, entitled "TeMiPWAP - WAP interface for TeMIP Integrated Management Platform"), and 256-257, with translation on pages. 695-696 (website page on the Internet <Gsm4u.cz>, available at <<http://www.gsm4u.cz/All/technika.htm>> in which states that it was made on 08.26.2000 and updated on 09/19/2000 - cf. fls.257 / 696), together with the testimony of witnesses Pedro Rafael Bonifacio V itor, Mário Serafim Nunes dos Santos and Carlos Ju lesson Ferreira Lawrence, with the reason of science above. It should be noted that the Court concluded that since, eg it less Jane iro 1 9 9 7, ques ã solutions ID oconhec alarm home and car, with the possibility of alarm notification by phone, and not that "since the mid-90s that found on sale in the market, "as contained in that led to instructory base, since the documents listed above can only be need in probative headquarters, the solutions were known (because disclosed) and with reference to the earliest date mentioned in them (in Specifically, in doc.9 - 01/13/1997), not resulting from witness testimony and documentary produced enough evidence to support the demonstration of date and effective marketing on the market in terms questioned the basis instructory.

- Facts 26, 27 and 28 (paragraphs 11, 12 and 13 of the base instructory.) - Based on docum ent content of n. 9 °, and presented by the authors at pgs. 176, with the translation fls.668 (KR970000569 application for patent, 13/01/1997, "Car Page 41 of 85

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burglar protection using wireless telephone "/" Method of anti-theft protection Car via mobile phone "). Also note, that with regard to the 28, the witness Pedro Rafael Bonifacio Victor explained the functioning of the DTMF technology alarm systems.

- Fact 29 (No. 14 of instructory basis.) - Based on document content n. ° 10, presented by the authors and next to fls.177 to 188, with translation to fls.671 676 (publication of news on Lin and iCT News - NZ Herald News of 27 August 1999, entitled "High-tech ideas need nurturing and seeding" / "The high-tech ideas have to sow and cultivate ").

- Facts 30 and 31 (points 15 and 16 of the base instructory) - Based on the content document n. ° 11, presented by the authors and next to fls.179 to 185, with the translation fls.678 685 (article entitled "Ericsson's e-box system - An electronic services enabler "/" The system e-box Ericsson - An enhancer



Electronic Services, "published in Ericsson Review, no. ° 1, 1999).

- Fact 32 (No. 17 of instructory basis.) - Based on document content n. ° 12, presented by the authors and next to fls.186 to 255 (end of work Course 1999/2000, directed by Ricardo Pereira and directed by Teresa Flow, 1ST, Department of Computer Science, entitled "TeMIPWAP - Interface WAP for TeMIP Integrated Management Platform "), and, as reported that 19 the purpose of the witness Mario Nunes dos Santos Serafin know the mentioned work by having read it, although a long time ago, and that this and the witness Pedro Rafael Boniface V itor identified as having been guided by the teaching of the 1ST and his colleague who is indicated in written. However, resulted not proven that that work has been publication or disclosure and which he had received, and will not She was found the alleged 1999 as the date of completion.

- Fact 33 (No. 18 of instructory basis.) - Based on document content n. ° 13, presented by the authors and next to fls.256 to 257, with translation on pages. 695-696 (the site's website <gsm4u.cz>, accessible at the address <Http://www.gsm4u.cz/All/tehnika.htm>, which states that it was done in 26-08-42 H5 dc

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Intellectual Property Court

1 \* Judgment

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2000 and updated on 19/09/2000 - cf. fls.257 / 696), and in that reference reproduces the text announced on the Internet site mentioned.

- Fact 34 (No. 19 of instructory basis.) - Based on the content documents n. ° \* 10:13, presented by the authors and together under sup indicated ra, in which does not refer to the use of WAP technology in systems that advertise and / or describe. Also note that the witness Pedro Rafael Boniface V ito r explained the operation of DTMF technologies SMS and alarm systems. However, for systems specified in facts 29 and 33 can not determine whether any of these technologies is used, resulting only found that not reporting the use of WAP.

- Facts 35 and 36 (n.05 20 and 21 of base instructory) - Based on the content document no. 14 °, and presented by the authors at fls.258 to 312, with the translation fls.697 to 705 (minutes of the event "Wireless Web Workshop" / "Session work on the wireless network, "with the date 11/12/2000, available online at <https://www.ftc.gov/news-events/events-calendar/2000/12/mobile-wireless-web-data-services-beyond-emerging-technologies>).

- Facts 37, 38, 39 and 40 (n.08 22, 23, 24 and 25 of the base instructory) - With based on the content of the docum ent n. ° 15, presented by the authors and next to fls.313 314, translated to fls.761 763 (p re ss re le ase dated 03.20.2001

"Melody launches unique mobile remote control of the intelligent home in cooperation with Nordic Alarm "" Melody launches unique mobile remote control smart home in cooperation with Nordic Alarm ", which is available on the website

<<http://news.cision.com/se/mobílehts/r/melody-launches-unique-mobile-remote-control-of-the-intelligent-home-in-cooperation-with-nordic-alarm>, c39113>, in which indicated access "pdf 'the document

<[Http://www.bit.se/bitonline/2001/03/20/20010320BIT01050/bit0001.pdf](http://www.bit.se/bitonline/2001/03/20/20010320BIT01050/bit0001.pdf)>). Per

Furthermore, as regards the CeBIT 2001 event, the document n. ° 1 \$, along by the authors to fls.315 316 (Público newspaper News of 03/22/2001 "Most trade fair for information technology - CeBIT 2001 under the sign of Page 43 HS

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Property Court In Telectu al

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Wireless telecommunications "), supports the demonstration of its achievement, March 2001 in the city of Hanover, Germany, and which is considered a the world's largest trade fair of information technologies "(this last part in conjunction with witness testimony in fra indicated under n. °

41).

- Facts 41, 42, 43 and 44 (points 26, 27, 28 and 29 of the base instructory) - With Based on the content docum then n. 16 °, with the authors to fls.315 316 (News Public Newspaper, 22-03 2001 "The world's leading technologies Information - CeBIT 2001 under the wireless telecommunications sign "), conjunction with witness testimony Peter R AFAE I Bonifacio ITO V r (Never at the fair in question, but know of its existence, size and importance, because the IN ESC and other companies connected to it have participated in the event), Renato José M coolest Ferreira (visited CeBIT in 1998 and that the degree of size of the event and the participation of Portuguese), Carlos Ferreira Ju lesson Lawrence (been to the fair in question, which He described as being of great size, with the participation of Portuguese, as more visitors than as exhibitors, and in 2001 was the largest sector fair), Antonio Pedro Yes s Marcelo (ever been in and CeBIT it participates Portuguese, as more visitors than as exhibitors);

- Facts 45, 46 and 47 (points 36, 37 and 38 of the base instructory) - Based on docum ent content of n. 20 ° presented by the authors, and the constant fls.346 374, translated to the fls.800 814 (WIPO document on request of PCT / SE200 / 02399 -WO / 2001/041408).

- Fact 48 (No. 39 of instructory basis.) - Based on the content docum ents Nos 9, 10, 11, 13, 14, 15 (on the technical elements of date had already been disclosed) and 20 (as the object of the patent refer to the events 45, 46 and 47) together and contained by the authors of pgs. already above in conjunction with testimony of witnesses Pedro R afael Bonifacio Victor, Mary Serafim dos Santos and Carlos leagues N lithium Ju Ferreira Lourenço, with the reason of science above. With regard to

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first two witnesses, made reports, knowledge-based technology within the reach of most of the sector, reported the date which falls for the purposes of fact in issue, clearly point in that then a technician from the area or electronic telecommunications implement a car alarm system with sensors and actuators and control remote from a WAP phone. In turn, the third witness indicated at the time connected to a mobile telecommunications operator, said exist in the international market vehicle control solutions distance through mobile communications containing the principles and mode of based bidirectional operation, integrating sensors and actuators, which were not widely used because the technology was so "Unattractive commercially" (expensive solutions that only came to make is "commercially interesting" with the introduction of 3G technology and hones SMA rp), and conceptually those earlier solutions They could be applied and used in alarm systems (which was already possible with use of SMS technology, allowing exercise command). Like this, considering the then-known techniques, including, already announced in market (see the case of the alarm system of Melody Interactive companies Solutions AB and Nordic Alarm AB, published on 20.03.2001, with the announcement that would start up your marketing - cf. docum ent n. ° 15, at the authors), it was concluded in the sense that one skilled in the art to implement the solution easily announced in the patent (of a remote control electronic utility device from a mobile phone via Wireless Application Protocol) in interação scenario with an electronic device (remote controller) placed board of a car, from a WAP phone.

- Facts 49 and 50 (points 30 and 31 of the base instructory) - Based on the content docum ent no. 17, with the authors and constant fls.317 to 330, with the translation fls.763 773 (WIPO document relating to the patent application PCT / DE2001 / 002 468).

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Intellectual Property Court

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- Fact 51 (No. 35 of instructory basis.) - Based on document content n. ° 19, with the authors and constant fls.336 to 345, with translation to the fls.788 793 (Article published in the journal Computer Networks n. ° 42, 2003 (págs.493-502) entitled "System integration of WAP and SMS for home network system" / "Integration of WAP and SMS systems for home networking").

- Fact 52 and 53 - settled matter as set out in the points Q and R order of selection of the facts.

- Fact 54 (No. 39 of instructory basis.) - Based on document content n. ° 22, with the authors to fls.393 400 (with translation to fls.831 838) and the 927 994 in conjunction with testimony of witnesses Pedro Rafael Boniface Junior, who knows the route of one the author, from the time that INESC activity developed, which this was associated, having applicant's administrator, in 1996/1997, and António Pedro Simões Marcelo, which trabalhar to 1. ' author since 1993, knows the project in question.

- Fact 55 - settled matter contained in the dispatch point T selection of facts.

- Fact 56 (No. 41 of instructory basis.) - Based on the testimony of witnesses Pedro Rafael Boniface Junior and Pedro António Simões Marcelo, for the reason above science, and the declarations of Party which provided the legal representative of the 1st author, Fernando Rui Oliveira Moreira, spelled out in some detail the way from the project "CARGOTRACK" to the "XTraN" as well as the essential characteristics and features of each.

- Fact 57 (No. 42 of instructory basis.) - Based on the testimony of witnesses Pedro Rafael Boniface Junior and Pedro António Simões Marcelo, with the reason of science above, whose temporal references which indicated probatoriamente they support the appointed year 1996.

- Fact 58 (No. 43 of instructory basis.) - Based on the testimony Pedro Rafael witness Boniface Jr., who described the role of the 1 Page 46 85 ilc

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author and her technicians, some of which are licensed by 1ST, where he teaches, in the development and industrialization of the product "XTraN", and that the Industrial partner in the joint project carried out with INESC, of which witness was a part.

- Fact 59 (No 44 instructory basis.) - Based on the testimony The witness Ntonio Podro Yes s M arcelo, with the reason of science above indicated, and in part of statements provided, the legal representative of the 1st author, Fem walk R ui The liveira Moreira, he referred to the contract concluded in 1996 with CTT.

- Facts 60 and 61 (45 and 47 nM basis of instructory) - Based on testimony of witnesses Pedro Rafael Junior Boniface and The Ntonio Pedro Yes s M arcelo, with the reason of science above. The first witness He described the characteristics of the system "XTraN", in particular with reference to 1997, when it had close contact with it, and underlined the importance of the computer in the fleet management system, since working with information that requires greater capacity (such as the the car location maps), and hence the need for a computer centralize, process and store the information, and to both insufficient WAP technology oriented simplest solutions (such as the alarms). The second witness stated the operating mode of said product, having the mentioned 1st author did develop a prototype solution with WAP technology, but never passed the product commercialization.

With regard to the factual segment sma RTP hone with internet access

as system interface in question, revealed a witness's testimony Carlos Ju lesson Ferreira Lourenço, who described the operation and components of fleet management systems, a current perspective, in which includes the use of RTP hone sma to access the Internet, in which the fleet manager (user account) has access to the host platform (the is the case with access by personal computer, the Internet),  
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Intellectual Property Court

1 Judgment

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docum conjunction with the content then June to the fis.1174 to 1775 (Print page of the site of the 1st author on the Internet, which states that to access information on the activity of vehicles just a simple Internet access platforms that plaintiff company). Incidentally, in the case of system 2nd author is referred to expressly in its website that to access the Frotcom is needed computer or smar tp hone connected to the Internet (Cf. docum ent in June to a fls.1176 to 1177).

However, the exposed face sup ra and given the current setting smar tp hone ( "mobile phone connectivity and features similar to those of a personal computer, particularly with an operating system capable of run multiple applications, "in Dictionary of Portuguese Priberam, 2008-2013, available on the Internet at <<https://www.phberam.pt/dlpo/smartphone>>) being that this is equipment that allows access to the Internet, it was concluded the system of the 1st author fleet management has also as the interface sma RTP hone.

- Facts 62 and 63 (n.05 48, 49 and 50 of the base instructory) - Based on testimony of witnesses to J R ena is the F erreira M ade go, which reported that the QUADRIGA company, which led to the second .the author and which was part of the Engineer Valerio Marques launched the first fleet management system created in October 1997 ( "Frotcom 1.0"), having the witness appear in hearing a brochure for its disclosure dated that month and year, C s air io F J U L U erreira Ouren O o, which indicated that the chariot, a company that led to the 2nd author was contacted, as in 1996, then TELECEL to present the product "Frotcom", and John Zeferino Pires Peter, knows the Valerius Engineer Marques from when it was linked to the 1ST (Robotics). With regard to Valerio Marques relationship with QUADRIGA company also revealed the content of the docum ent n. ° 8 offered the 1st defendant and the constant fls.1165 1168 (interview with Valerio Marques, co-founder and CEO of Frotcom, entitled "Startup Day - Frotcom", in which It states that prior to starting the Frotcom, that was CEO of QUADRIGA a  
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Intellectual Property Court

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company operating in the area of mobile solutions, and that Frotcom was one in sp off the QUADRIGA).

- Fact 64 (S and common ground point 51 of instructory basis.) - The undisputed S regard to marketing, the 2nd author, the product called "Frotcom Premium ". For the rest, the Court relied on the document content n. ° 8, sup ra indicated, and document n. ° 2, and presented by the authors at the fls.64 69 (business registration certificate on the 2nd author, which was established on 18/01/2008 and having as managing partner Valerio Manuel Machado Marques).

- Fact 65 (No. 52 of instructory basis.) - Based on the testimony witness Renato José Ferreira Madeira, which began work in the company QUADRIGA in 1997, moving in 2008 to the second author, and he has been explained one of the creators of the system "Frotcom" in conjunction with the document content n.° 8, sup ra indicated (paper presented at 1st defendant).

- Facts 66, 67 and 68 (n.05 53, 55, 56 and 57 of the base instructory) - Based

the document content to the June fls.1176 to 1177 (website page Print 2nd author on the Internet - <[http://www.frotcom.com/saiba\\_mais/](http://www.frotcom.com/saiba_mais/)> - where are announced the features and operation of the product "Frotcom" and where we read that "to monitor each vehicle, Frotcom uses a device which incorporates a GPS receiver and a GPRS communication module. The data from each vehicle are sent in real time to Frotcom Data Center and immediately recorded and processed, become available for viewing, are also analyzed to detect and report any alarm situations. By Frotcom application, in addition to display the location of vehicles in your fleet in real time, you can still use a set of features to speed up and control various tasks of their day-a-day. No need to install software: All you need is a computer or smartphone connected to the Internet to access the Frotcom ") in conjunction with testimony of witnesses Carlos Julio Ferreira Lourenço, with the reason science above, and John Zeferino Pires Pedro, who described the

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equipment that settled when he worked at the service of the 2nd plaintiff from 2001 to 2004 and clarified that it does not use WAP technology.

- Facts 69 and 70 (points 58 and 59 of the base instructory) - Based on the content documents together fls.1174 at 1175 and 1176-1177 (pages print

the sites of the authors on the Internet - <<http://www.tecmic.pt/portfolio/rent-a-car-leasing>> and <[http://www.frotcom.com/saiba\\_mais/](http://www.frotcom.com/saiba_mais/)> - in which are announced features and operation of products "XTraN" and "Frotcom") and

the testimony of the witnesses Pedro Rafael Boniface Jr. and Carlos Julio Ferreira Lourenço, with the reason of science above, and the

In witness José anuel the Ram Garcia Pereira referred also to the role of location with GPS usage executed by the management system fleets, generally considered, and the control of belt Mario Rui an S ts noted in user perspective, the other functions (such as control costs and reading km) that such systems may perform.

- Fact 71 (No. 65 of instructory basis.) - Based on the documents Nos 1 and 2 presented by the 1st defendant and together fls.475 478 (copies of letters question), combined with the testimony of the witness Mario Jorge Rom pant Pim enta, which confirmed the preparation of the letters in question, having your submission been borne by the two aft. In the absence of documentary evidence that supports the effective delivery of letters, only found the wording in constant terms of these documents and the testimony of the mentioned witness.

- Fact 72 (points 67 and 68 of the base instructory) - The patent registration question intended to give publicity to it. On the other hand, the various news around the creation of the 1st defendant contributed to its dissemination to the age groups (see events 86, 87, 88 and 89). Moreover, in the case of the 2nd author, the content Constant letter of the document n. ° 7, hosted by the 1st defendant and with the fls.1163 to 1164, is likely to sustain at least April 2003,

legal representative and founder of that claimant came to know of existence of "Intelligent System for Mobile Multipurpose" said  
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respondent. Finally, it is clear that the authors have come to know in detail the patent in question from the criminal complaint against them was that presented and continued to market their products. So all conjugate, the Court concluded towards the accurate knowledge of 1 of the patent the respondent °.

- Facts 73, 74, 75 and 76 - Raw settled constant, respectively,

the points U, V, W and X.

- Fact 77 (No. 61 of instructory basis.) - Based on the testimony witness Renato José Ferreira M coolest, who alluded to the time spent 2 by the author and described research work and information gathering carried out following the criminal case brought against the authors, together with the document content ju n fls.383 to a 388 (No. 21 doc.. - exhibition presented by the 2nd plaintiff in the criminal proceedings mentioned that contains several documentary references).

- Fact 78 (No. 63 of instructory basis.) - In the part of statements that provided, the legal representative of one .the author said hiring lawyers for the criminal proceedings. Given the nature of the process, with intervention binding supporter in conjunction with the document content together with the fls.389 392 (request that here 1st author presented in that criminal case, signed by lawyers) and the constitution as defendants' representatives cool the applicants (see fact 75) it is normal and expected in accordance with the rules of common experience, the accurate hiring lawyers.

- Fact 79 - Based on the docum ent at fls.1178 to 1185, with the final hearing (order of the copy delivered on 02.20.2014 in case n. ° 201 / 10.3TAPVZ rejecting the request instruction opening here presented by 1st defendant).

- Facts 80, 81, 82, 83, 84, 85, 86 and 87 - constant settled matter, respectively, points Y, Z, AA, AB, AC, AD, AE and AG order of selection of facts.

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- Facts 88, 89 and 90 <paragraphs 69, 70, 71 and 72 of the base instructory) - Based docum ents in n.0510, 11, 12, 13, 14, 15, 16 and 18 presented by the 1st defendant and together fls.492 the 495, 496, 497, 498, 499, 500-502 and 505 (containing CD video report), which relate to news published in newspapers and magazines and even a TV report.

- Facts 91 and 92 (n \*\* 1 73 and base 74 of instructory.) - The news reports They point towards the fact ascertained, which essentially was corroborated by testimony of witnesses José In anuel am the R Pereira Garcia and Joaqu im H enriques Dario Neves, with the above ratio Science

- Fact 93 and 94 - constant based Matter points O and P order of selection of the facts.

- Fact 95 (No. 75 of instructory basis.) - Based on docum ent No. 20. presented by the 1st defendant and next to the fls.507 510 (copy of the license agreement holding the patent referred to this fact).

- Facts 96, 97 and 98 (points 76, 79 and 80 of the base instructory) - Co results of the award certificate joins fls.614 the 628, 2 the defendant was declared insolvent (cf. fact 101), it having been introduced to the bankruptcy, which conjunction with witness testimony and m anuel Garcia de Conception with the reason of science above, supported with the sufficiency statement of facts in question.

- Fact 99 (paragraph 81 of instructory basis.) - Reports of constant news the documents in the case point towards the ascertained fact that, essentially, it was corroborated by the testimony of witnesses José In anuel Am P R L Ereira arcia Joaqu and D im ary H enriques Neves, the ratio of science above.

- Fact 100 (points 82, 83, 84 and 85 of the base instructory) - Based on Witness testimony in Joseph R anuel am to Pereira and Joaquim Garcia Dario Neves H enriques, with the reason of science indicated above being right that regardless of whether or not a ground of invalidity of patent, to appreciate the present action, taking into account the situation in question

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(Patent granted by the competent administrative authority, broad dissemination the same to the public and no gains with the same, together with the difficult economic situation of the 1st defendant, dedicated to the inventor of activity) is normal and expected, given the rules of the common experience that the defendant feel shame, frustration and disturbance. However, evidence not produced It resulted that the calculated psychological and emotional state has resulted and results behavior of the authors, translated in marketing systems "XTraN" and "Frotcom Premium".

- Fact 101 - certificate of judgment which declared the insolvency of the 2nd defendant, 628 joins the fls.614.

In relation to the fact that not proven /., The authors failed to demonstrate the final work of constant travel document n. ° 12, near fls.186 255, was published and that this took place in 1999, and the depositions of witnesses P ro d R a B on lfa fa el V c e R e M ary S ITO was end of S to an un s N s, said recognizing mentioned writing by treating a Work 1ST where teach not been such as to sustain {demonstration of such publication the first witness reference to existence of ta works! luck in the Office's library was not consistent enough for the purpose of completing the concrete work there is provided that date) or it results of the same content (no any stamp or notation on the entry, and when the system library or document management 1ST). Incidentally, as regards the date, the constant references allude to the same 2000 publications and October 2000 (cf. fls.253), from which it draws ever work that cites, at least that issue, could have been published in 1999.

With regard to the fact that not proven // .. the docum ent no. 18 °, with the the authors fls.331 335 and the translation fls.782 to 784, unaccompanied by any explanation of its content conveyed by the document or witness, not were such as to prove the alleged fact, so in the absence of other evidence He S3 Page 85

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documentary or testimonial was concluded towards non demo

Reference in that

As for the facts not proven iii.eiv. It was not testimonial evidence made, documentary or other which led to his demonstration (the authors do not joined copy of the article indicated in Article 89 of the initial application). Regarding the fact that not proven u, documentary evidence has not been made, witness or other which led to his demonstration, and for both insufficient information provided in part based on statements by the legal representative of the author 2.

Regarding the fact proved not seen .. as mentioned in seat

No motivation proven fact. 60 ° to access the system "XTraN" author of the 1st just access to the Internet the respective platforms, which can be done by smartphone with such access. Now, with a smartphone a mobile phone, yet that with these specific features and functionality similar to a personal computer, the answer to this fact would have to be negative without Subject to that established the purpose of the fleet management system question have never used the WAP (cf. proved that n ° 61 and that proven paragraph 67, as the "Frotcom Premium 2nd author"). - On the other hand, the actual wording of the site of the 2nd author on the website (cf. together impressions fls.1176 to 1777) follows that to access the Frotcom just have a smartphone connected to the Internet (cf. proven fact 68) and sending messages and alarms SMS for mobile phones is an optional feature that system.

Regarding the fact proved not vii .. failed to produced evidence demonstrate that all systems (without exception) have the common practice in fact indicated in the reference.

Regarding the fact proved not VIIa produced evidence supported the

demonstration of factuality indicated under No. 70, not proving segment alleged by the plaintiffs contained in this point.

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As for the fact unproven ix. . documentary evidence has not been made, witness or another to support its statement, and the documents in criminal proceedings in question and went together to evidential records have no such effect results from the same or not circumstance it was proved sending of letters as indicated in fact not proven xiv.

With regard to the fact that not proven x and testimonial evidence .. document produced was not capable of leading to a demonstration, and R andin that the witness to J is F and M ad will rre alluded to and will work Research carried out under the 2 nd author, for which he works, and that evidence relating to criminal proceedings in question, contained in document n. ° 21, with the authors to fls.375 392, do not show any activity gathering evidence for Band 1st author (the application there by the it does not state elements in such a way - cf. fls.389 to 392), given that 2 "author presents a display in such file containing various documentary references (cf. fls.383 to 388), which goes against the testimony of that witness. Finally, the part of statements made by the legal representative of the 1st plaintiff are insufficient perse, demonstrate this fact that leverages the applicant itself.

The facts not proven xi. ii .. former with reference to the motivation 77 on the proven fact, the witness testimony R and n s is the act J F and M ade rre anger anger and the statements made by the legal representatives of authors, in conjunction with the rules of common experience, just made proof of factuality aii indicated, staying for demonstrating aspects xi set out in those points. and xii.

On the facts not proven xiii. i .. EXD was no evidence documentary, testimonial or other which led to his demonstration. With regard to the fact that not proven XIV. (And the fact that xi /., Who was impaired due to the negative answer anteriorl. as mentioned regarding the motivation and the proven fact no. 71 °, the documents 1 and 2, presented by one and the defendant together fls.475 478

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1 "Judgment

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(Copies of the letters in question), in conjunction with the witness's testimony M ary J RG and R im R ompan en ta te, which confirmed the preparation of letters, having your submission been in charge of the 2nd defendant, only results proved the wording the letters in question, getting to demonstrate their effective mailing and reception band by the authors.

Regarding the fact proved not xv ii. , The 2nd defendant was declared insolvent, but produced in the test file not resulted in such a situation it has been result of competition from companies like the authors, with the marketing of products "XTraN" and "Frotcom."

With regard to the facts not proven xviii. xix .. and it has not been proved, especially testimonial or documentary, which led to his demonstration, it being understood that the defendants criminal complaint complied with a set of 27 companies to whom they impute practices similar to those alleged in duh relation to the authors (cf. docum ent no. 21 °, with the authors to the fls.375 392).

Finally, as to the facts not proven xx. exx U, reasons marked on the seat of motivation as to whether 100, the evidence produced, together with the rules of common experience, only led to demonstration of what is stated in this paragraph, getting to taste the elements



referred to in points under consideration.

The right

In these proceedings is concerned, as the first claim of the authors, the invoked invalidity of the national invention patent n. 102634 °.

It holder 1 of said patent the respondent, the 06/18/2001 requested and obtained in grant by INRI on 03/04/2005, and throughout its administrative process changes were made to the claims that the final release date of 02-03-2005, which fell on the research survey that Institute in 04.03.2005.

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Property Court In Telectu al

1 "Judgment

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First, it must determine which legislation to be considered for the assessment of the invalidity raised, since the application for registration It was presented during the term of the 1995 CPI (approved by Decree-Law n. 16/95, of 24 January), but the patent came to be provided if already prevailed the 2003 CPI (approved by Decree-Law no. 36/2003 of 5 March). Now, given the context set out in Article 2 of the 2003 CPI, according to which the law applies to patent applications made before its entry into force and which have not yet been subject dispatch definitive, and the validity or invalidity must be assessed with reference the conditions of substantial and formal nature established by by applicable law, as stipulated in Article 12 of the Civil Code, it is concluded that the analysis of invoked invalidity must be made in the light of the measures introduced in 2003. In this context, the patent is intended to protect new inventions who involves inventive activity and are susceptible of industrial application, may be about products or processes relating to all areas technology (Article 51, n. ° 1 and 2 of the 2003 CPI).

The patent confers on its exclusive exploitation rights holder for a certain period of time from the date of the respective application (Articles 101, n. 9 1 and 9 of the CPI 2003), the scope of protection determined by the contents of the claims and the description and serving drawings for interpretation (Article 97 of the 2003 CPI).

Its award assumes that the invention meets the requirements of patentability provided for by law:

- Novelty: An invention is considered novel when it is not understood in the art (Article 55, paragraph 1 of CPI 2003.);
- or C arácter inventive inventive activity: it is considered that a invention involves inventive activity if, to one skilled in the art, not result in an evident manner from the prior art (Article 55, no. 2 of CPI 2003); and

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- Character industrial or industrial application: It is considered that a invention is susceptible of industrial application if its subject matter can be manufactured or used in any industry or gender in agriculture (Article 55 °, no. 3 ° CPI 2003).

The grant of the patent involves only legal presumption of their requirements (cf. Article 4, n. ° 2 of the 2003 CPI).

However, if granted, the patent nullity suffer when your Object does not meet the requirements of novelty, inventive step and application industrial (cf. Article 113, paragraph a), the CPI 2003).

In the present case, the authors argue that the Pat. No. 102634 is nil for lack of novelty and inventive nature.

Not being concerned industrial application of the susceptibility of their object, the analysis that fulfills perform will focus therefore on those two patentability requirements.

The novelty is based on the idea that to be patentable, "the invention It must be a creation of the author and can not constitute a repeated others create "1

As it follows the provisions of Article 55, n. 1 of CPI 2003, there when the new invention is not understood in the art, the which consists of everything inside or outside of the country, it has been made accessible to the public before the date of the patent application, by description, use or any other means (Article 56, n. 1 of CPI 2003), also being considered as understood in the art the content of applications patent and utility model applications prior to the date of the application patent, to produce effects in Portugal and unpublished (Article 56, no. 2 of CPI 2003).

As regards Louis Goncalves Couto, "The prior art comprises description, use or any other means of disclosure, clear and unambiguous, in a similar invention, i.e., an invention that represents,

'See Judgment ratio dc Lisbon 01-10-2009, available in Internei cm <hup: //www.dgsi.pl>.

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substantially the same solution to the same technical problem. The brake Novelty can check by a desenhão the invention by any shape, writing, speaking (or since documented later proven) sound, audio visual, digital or otherwise, or their non-private use. The invention is made accessible to the public where disclosure allows a specialty expert to develop the invention at the time of request and the recipient has no legal duty, professional or contract of secrecy. The notion of public is not quantitative. A simple person who has been disclosed the invention, it is able to understand the information and does not have the obligation to keep a secret, can be quite to satisfy the requirement. Have a group of people that unspecialized have verbal prior knowledge of the invention, but are not capable and the exploring or-not hamper understand the novelty of the invention. ^

Ca Ra te r in ven tiv based on the basic idea that only deserve protection via a patent "setting which can not be obtained as a result normal and logical knowledge or prior art in particular time, which means that the invention must overcome the technical industrial current or capacity or normal an average expert in colleges matter. " 2 3

So we have that to be protected, the invention must not only be new as also required that one skilled in the art, understood as a "Average coach-informed, competent and experienced", "not be able to reach, in an evident manner, to the same end, the time protection is sought ".4

In casu the patent of the 1st defendant, entitled "Intelligent System MULTI USES FOR MOBILE PHONE "in the final version that has been granted, first claim presented as:

2 See Louis Couto Goncalves, Industrial Law Manual, 4th ed "Coimbra. Almodina. 2013, p.63.

'See Judgment of the Lisbon Relationship 01-10-2009, available on the Internet at <http: /Avwww.dgsi.pt>.

4 See Louis Couto Goncalves, op. cit., p.65.

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"Intelligent multi-purpose system for mobile, characterized by being constituted by two modules: a security module c a W AP server module, forming urn

platform for the implementation of alarm systems with intrusion notification to a mobile terminal with actions control functionality corresponding to actuators installed in the security module, remotely controlled, by handset from the person served, where the handset has software which features are accessible through access menus in the communications terminal mobile, WAP server module contains software dedicated to dc terminal communications furniture which implements monitoring and control functions of the dc alarm system, It may be associated with a Call Center, and the security module comprises:

- A dc Communications Terminal Mobile operating according to the system mobile communications L SM, L PR S, A or L extra TS.
- an electronic printed circuit board control c communication composed by a microcontroller (6) communicating with a personal computer through a A connection S232; a module for mobile communications (5); an interface to the DC system autonomous power; Interfaces to sensors 20; 20 and interfaces to actuators;
- an antenna;
- sensors c actuators;
- dc control software resident on the printed circuit board;
- PC software that implements the dc interface management functionalities a circuit board impresso.<sup>7</sup>

The first claim re claim materializing in d ic iv ation in dependen you, namely, defining and features to the Le Men and n are single techni s essenc is going to the invention, while the remaining {claims 2 to 6, where in the presence) are re iv in d ic ÷ esdependen C as you if such express "the singularities or technical features "of the first, meaning that "Translate rm asespec ic IF the embodiment of the invention." Thus, in addition to to refer to the characteristics indicated in the independent claim added, especially "Le Men and n to s single techni SSUP Le Men re ta is more IF the specific ic ", and therefore" rm if the specific IC ASDE Liz re ation of claim

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whether they are connected to ".5

As mentioned in the respective descrição6 the invention concerned "enquadra- in the field of alarm systems and security assets, increased comfort in the home and performing many useful tasks, adding ability to automatically notify the owner, the occurrence of events alarm and other, giving you the ability to act in various ways either on the right to be protected in order to prevent or hinder the action of intruder, whether acting on air conditioning equipment, irrigation by spraying, appliances, etc.

There are various usage scenarios of this system: cars, houses housing, condominiums, gardens, villas, soccer fields, tennis, etc ...

The warning device notifies the user through a call, allowing you access to various functions, notably in case of intrusion and attempted car robbery: to establish a dialogue with the assailant, and light control glasses of the vehicle, the fuel cut valve for closure, can sound the siren, film and record images on storage media, transmit the vehicle location (GPS or GSM interface itself - location Basic).

If installed in a building, garden, farming or other land, the system also report to the owner or authorized user, responsible for security or maintenance that may act, depending on the situations that They encounter, according to the options open to you: activate the lights electrical, sirens, video surveillance, turn on appliances, electric stove, air conditioning, irrigation sprinkler system, etc ... "(cf. fact 5).

It is, therefore, an alarm system for multiple uses that includes a security module with sensors (independent claim

5 See JP Medicine Marques, "The content of the patent applications: the description of the invention and the importance claims - Some notes "irt The Law 139 of year 2007, págs.799-800.

6 The description serves to interpret the claims (Article 97, n. ° 2003 I CPI) must indicate, briefly and clearly, without reservations or omissions, all that is the subject of the invention, containing

A detailed explanation of at least one embodiment of the invention, so that any person skilled in this field to be carried out (Article 62, n. ° 4 of the 2003 CPI).

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refers to notify intrusion) and actuators (the independent claim refers to actions control functionality corresponding to actuators installed in the security module, remotely controlled via handset from the person served) and a WAP server module, accessible and operation (including the actuators remotely controlled) is It is through mobile communication using WAP technology. In claim dependent on n. ° 2 to the application is characterized system in question to a vehicle, al exposing the sensors and their interfaces include a break-in attempt detector locks the doors of the vehicle, burglary attempt detection of locks hood of the vehicle break-in detector of the luggage compartment locks of the vehicle, attempted detector to remove the wheels of the vehicle detector attempt to break the windows of the vehicle, panic alarm in the event of sequestration or driver disease, lack of water in the radiator detector carrier, oil starvation detector in the vehicle, failure or anomaly detector in braking system of the vehicle camcorder that allows the identification intruder inside the vehicle, camcorder which enables the identification of outside the vehicle in case of collision and other sensors.

In claim dependent on n. 3, which also concerns the applying the system to a vehicle, and exposes the respective actuators interfaces include an audible alarm in case of attempted burglary, burglary or theft of the vehicle door opening, door closing, cutting fuel circuit, the electrical circuit section ignition lock of the steering, the pedal locking system, which speaker enable playback on the user's voice from the vehicle interior that has the handset speaker that enables reproduction outside the vehicle the speaker's voice that has the movable terminal, microphone that enables Reproduction intruder's voice or sound inside the passenger compartment to the terminal mobile user and other actuators.

Meanwhile, with the dependent claim n. ° 4, also on the

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system application to a vehicle, versa, in essence, on the system mobile communications that integrates the invention, indicating a module mobile communications to enable the geographical location of the vehicle, or This geographic location can be performed by another module as the GPS system or the other, and the transmission of such information location for the user's mobile terminable or another mobile terminal desired by the user.

The dependent claim with n. 5 ° respect to the plate feeding electronics located in the vehicle.

Finally, the dependent claim is to paragraph 6 wherein the implementation of intelligent system for multi-purpose mobile phone in question real estate, without any technological changes beyond aii indicated that deal essentially on the type of sensors and actuators, sof tw re microcontroller of the electronic board and this power board. Despite the independent claim (as well as others which depend on it) has undergone changes over the respective process

He ran terms with the INPI, and the final version was presented in 02-03-2005, which immediately does raise the question of the date to attend to analysis purposes of novelty and inventive activity (if the request if the version considered in the granting of the patent), discuss still the This field as a time reference having the date of the patent application, ie 18.06.2001.

Starting with the requirement in November id ade.

In this context it was found that integration in the same modulus, sensors and actuators was the basis of all alarm systems (intrusion and others) that are on the market since at least the 90s, although they did not use mobile media with transmission data (cf. acts 16 and 17). On the other hand, on 06.18.2001, the server module WAP was a known component of any technical telecommunications or information technology, and is a standard protocol  
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Intellectual Property Court

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open specifications and open to the general public and known to the this technical area since at least 30/04/1998 (see acts 18 and 19), that

It adds that the phone was also in mid-2001, a technology current and banal, then existing in the market many mobile phones that supported WAP technology (cf. facts 23:24).

However, the set of facts stated above is not capable of shattering novelty of the subject of the patent of the 1st defendant, although those using technologies already known, presents a system to respond to a new technical problem.

Nor is it the subject of published patent application in Korea in 1997 ( "Car Theft protection method using phone without wires " ), for which it was found that the technology used to establish the interação between you and the car alarm was the mobile phone, only with use of bitonal multifrequency (DTMF) and not using the protocol WAP (cf. facts 26, 27 and 28). Indeed, even assuming that the technology there used, based on the data transmission by a voice channel (DTMF) I had the ability to perform the functions announced in patent 1st defendant, simply replace one by another (this is obvious since the 1st not guilty arrogates creator of the WAP protocol), it is certain that it does not detect the set of facts established as this request for the 1997 Remote Control actuators via mobile phone (control actions functionality, control remote actuators installed in the security module), which is a the essential elements of defendant's patent.

Regarding the final course work a student of the Institute Superior Técnico, in which described an alarm management system and network equipment operation, via mobile phones with abilities WAP (cf. fact 32), in addition to not having established that was not published in to date (cf. fact not proven /.), there is not therefore sufficient information to conclude if and when it was taken available to the public for the purposes the provisions of Article 56, n. 1 of the 2003 CPI, the information on it  
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Intellectual Property Court

1<sup>o</sup> Judgment

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constant does not follow that there is no response to the same technical problem solved by the patent in question, so it is no room possibility of being considered as relevant prior art.

On the other hand, the news published in a New Zealand newspaper, on 08/27/1999 (Actually 29) lacks, by itself, enough information to enable shake novelty of the subject of the patent of the 1st defendant not meet the conditions for configure a system or technological response to re p sin you,

subs ta en nc lm, LU amesmaso ra tio opa omesmop ro b le m Techn ic, which it is with the "Car Alarm GSM 500" advertised on the Internet site, September 2000 (cf. fact 33), wherein the contents of these disclosures is not such as to enable a branch of the technician to perform a system that corresponds to the result obtained by the patent in question, serving only generic references to the product and some of its features, which, even considering the level of general knowledge that the date such technical would, it seems to clearly insufficient.

Regarding the solution presented by the technical laboratories of IBM in event "Wireless Web Workshop" ( "Working Session on the network without Wires "), held in December 2000 (cf. acts 35 and 36), the calculated field in such a context (display of a remote control apparatuses solution electric and electronic statement with a solution via interaeração WAP mobile) does not constitute a solution to the same technical problem solved in the patent in question (alarm system that combines sensors notification function and actuators operated by remote control, which is multi-uses and, according to the dependent claims, applies to vehicles cars and real estate), so also does not call into crisis the novelty that

Same conclusion is extracted regarding disclosure in 1999 by Swedish company Ericsson, its vision for the remote control household electronic equipment through the equipment "e-box" in which It describes the technical architecture of such a system which allows binding of any  
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domestic equipment for remote control purposes via PC or mobile phone (cf acts 30 and 31). Here also does not detect the response to the same problem technical solved in the patent in question, not revealing therefore to shake the its novelty.

As for the alarm system of the Swedish companies Melody Interactive Solutions Alarm Nordic AB and AB, announced on 03.20.2001 by p re ss re le ase (press release), it seems to us that it contains the essential elements to substantiate system novelty breaks patented.

Indeed, then reported those companies that the product in question consisted of an alarm containing a WAP server soaked, this alarm which could be used in real estate, but also in industrial equipment, automobiles and consumer equipment, and the user could interact with the alarm by mobile phone, ordering various commands, such as opening and closing doors or control various other devices (cf. events 37, 38 and 39).

First, there is no doubt that the information concerning its product disclosed by way it was found (cf. fact 37) was made available to the public in the manner laid down in Article 5 6, n. ° 1 of the 2003 CPI.

Second, the product description then announced, seized the light of body of knowledge that at the time a technical electronics area or telecommunications had (corresponding to the general framework of knowledge statement of facts 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25, i.e. in Essentially, the integration in alarm systems, sensors and actuators, the implementation of modules servers with WAP technology, the existence of alarm solutions for home and car, with the possibility of notification alarm by mobile phone, already then the current and banal phone and existing in the market several models that supported WAP technology)

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constitutes sufficient information that enabled him to put into the system prática7

1. object of the patent ° defendant, as it shows characterized in specified in the independent claim and dependent claims, expose their application in vehicles (claims 2-5) and in real estate (Claim 6).

Even if that did not understand and were to admit that the coach area in question needed further investigation to perform the invention 1 of the defendant from the indications provided on the document of companies Melody Interactive Solutions AB and Nordic Alarm AB, which would lead to corresponding result, in its essential features to that patented invention, always say that the technical elements to date available allowed this solution was achieved without requirement inventive effort.

We enter therefore in the second patentability requirement that meets enjoy in the present case - ac tiv id ade in iv vent to what we will do more forward.

Also under NOV id ade, and with the temporal reference date presentation application (18-06-2001), these proceedings it was proved that, 7.6.2001, a patent application filed at WIPO published by Swedish company Ericsson (PCT / SE200 / 02399 - WO / 2001/041408), which claims priority 01.12.1999, designated "A device and method for operating an electronic utility device from an apparatus portable telecommunication "(cf. fact 45).

This patent described how one could be controlled electronic device utility, from a mobile phone via WAP protocol, wherein the specific examples indicated there were a machine vend in g (vending machine), a portable camcorder

7 Pedro Sousa e Silva refers to "enabling disclosure", corresponding to the term "enabling disclosure" used in British law, ie "a revelation to provide sufficient information to enable a skill in the art to implement the invention. " See Industrial ight D - Fundamental oções N, Publisher Coimbra, 2 0 1 1, p.55.

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(Digital camera) and a flat, one whose design is explained in the description as a schematic illustration of a WAP mobile phone, which can be used to access the Internet to make calls through services mobile telecommunications (voice, data and fax) and to access, control and operate a variety of electronic utility devices through modules autonomous WAP server (see Facts 46 and 47).

This patent application was indeed referred by the PTO in examining thirst made in the administrative procedure concerning the first patent the respondent, as constituting a relevant document to the prior art (cf. fact 13), which, however, not prevented the granting it for that Institute.

However, the analysis of elements determined in relation to said request patent filed by the company Ericsson, there is clear that the invention described and claimed it is unable to meet the same technical problem solved by the patent of the 1st defendant, since that does not include the strand a la rm ecomno tific ation ode in tru sound oparaum te rm in addition featuring VEL now demanded of the invention, as well as restricting its application to electronic utility devices, unlike the multi-purpose system analysis, which in the dependent claims specify use in vehicles (Claims 2 to 5) and property (claim 6).

We are therefore faced with a "same invention, ie, a representing invention, substantially the same solution for the same technical problem".\*

However, as it results determined in these proceedings, the date of application of 1 of patent defendant any technical area of electronic or telecommunications easily transpose the description given in said patent application of ERICSSON company for interaeração scenario with an electronic device

placed on board an automobile from a WAP phone (see fact 48).

What, again (cf. what was said supra, as the system of Alarm companies Melody Interactive Solutions AB and Nordic Alarm AB) in

\* Cf. Luis Couto Gonçalves, op. cit. p.63.

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1 Judgment

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refers to the act requirement *invenit*, to analyze further.

This scenario calculated the date of the patent application n. ° 102 634.

Later, but still preceding the final version of the claims

(02-03-2005), published on 14.3.2002, a patent request

the company VODAFONE AG with WIPO, for a "method

remote monitoring of home electrical installations with

sensors and actuators via a mobile radio terminal, "which is

described as a method able to act on electrical equipment

home by mobile phone via a WAP server or

other mobile communication technology, and to claim

independent characterizes by both the sensors, the actuators

can be remotely controlled through a wireless connection, the

from a home control unit, and this activation

domestic control unit is made via a mobile radio network and

It contains the commands, queries and settings such as alarms

triggered by the terminal user that are controlled through

the mobile radio terminal via at least one user interface

intuitive installed on the network (see Facts 49 and 50).

This patent application has also been reported by the PTO in examining headquarters

it sends within the administrative file of the patent of the 1st defendant

as an important document for the prior art (cf. fact 13) without,

however, is preventing the granting it, as it came to pass.

On the other hand, in 2003, an article was published in Computer magazine

Networks n. ° 42 (pp. 493 0 2 -5), entitled "System and WAP integration of

SMS for home network system "(" Integration of WAP and SMS system to

home network system ")", in which it described in detail one

technical architecture allowing remote control of home automation systems

(Including alarm) via mobile phone (see fact 51).

Now both documents relate to systems for

household equipment and, as such, do not solve the same problem

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solved the technical Pat. No. 102634, when it responds a

another technical field concerning vehicles, albeit dependent manner

(In Claims 2 to 5), and with reference to a multi-purpose solution

characterized an independent basis.

That is, such disclosures do not constitute obstacles to the novelty of the subject

patent in question.

This does not mean, however, that should not be considered as

prior art to take into account in assessing the headquarters of *invenit*

in the *invenit*, if it is understood that the relevant date for such a judgment should

report at the time of presentation of the claims version

They served as a basis for granting of the patent in question, for these contain

substantial changes compared with the previous and are reflected in the object

supervised by the industrial property right in question (cf. Article 11, no. 7 °

CPI 2013).

Let us, then, the requirement *invenit*.

In this context, it noted from to go along the lines of that held

Paul Mathély, "the inventive step is not confused with the news. For



patentable the invention must be a double barrier to overcome: First, should fall outside of what is known; then and out of what is known, it should still lie beyond what is evident "9

It must be, therefore, that "as the invention is only considered as would not action It could be obtained as the result of a logical knowledge or the prior art at a certain time ".10

As we have already mentioned, to which there is activity inventiveness is required that one skilled in the art (in the sense of a "technical Medium-informed, competent and experienced"), is not able arriving, in an evident manner, to the same result, at the time 4 Listed by Justin Cruz, in the Industrial Property Code, 2nd ed., Library Arnado, 1985. p.33. Cf. Américo da Silva Carvalho, The Object of Invention, Coimbra Editora, 1970, p.13. Vagina 70 85

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which protection is sought ".11

Making use of the "problem-solution approach" ( "problem-solution approach "), it (1) identify the closest state of the art, (2) identify the technical problem that the invention proposes to solve and (3) review to one skilled in the art with reference to the prior art

closer and that technical problem, the claimed invention would be a obvious solution this last step is necessary to assess whether, under normal conditions, the expert would come to this solution ( "would"), and he could not you would reach such a solution ( "could"). \* 12

In the case sub judic and as supra have advanced the state of the art embodied in the disclosure made on 20.03.2001, by Melody companies Interactive Solutions AB and Nordic Alarm AB, your alarm with WAP server soaked designed not only to buildings, such as industrial equipment, automobiles and consumer equipment (that is, the technical problem that 1 of the invention proposes to solve defendant) in which the user could interact with alarm by mobile phone, ordering various commands, such as opening and closing doors or control many other devices, together with the current technical knowledge at the time characterized the sector in issue (see events 16, 17, 18, 19, 29, 21, 22, 23, 24 and 25) and then the solutions already disclosed that, while not responding to the same technical problem, presented technologies applied by the claimed invention (such as the remote control of electrical and electronic devices via phone using the WAP technology - cf. acts 35 and 36), would lead to one skilled in the art came in a clear manner and as normal and logical consequence of their knowledge and the said state of the art, the results proposed in 1 of patent culprit.

" Cf. Luis Couto Gonçalves, op. cit. "p.65.

12 These methodologies "problem-solution approach" and "would / Could approach" were adopted by the IEP that employs in its practice. See Richard Hacon and Jochen Pagenberg, Concise European Patent Law, 2<sup>nd</sup> ed., Wolters Kluwer, 2008 págs.53-55. Cf. also Luis Couto Gonçalves, op. cit., p. 66, c Pedro Sousa e Silva, op cit., p. 58.

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Intellectual Property Court

In Judgment

Frontier Marques street - Palace of Justice - 1098-001 Lisboa

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Although not well understood, arguing to both the production of such a result was not obvious consequence, normal and logical ( "Would"), leaving only the field of possibilities suggested by that prior art ( "could"), since the information disclosed by companies Melody Interactive Solutions AB and Nordic Alarm AB did not provide a framework technical enough to lead, in the obvious way, the solution claimed in patent (reserves not sufragamos and appear to us, however, that the such disclosure is likely to break very novelty of the invention such as

expounded supra) always say that the state of the art embodied in combination that disclosure to the publication, on 07.06.2001, the request for PETA filed patent company Ericsson (cf. events 45 to 47) and with the background of the general knowledge of the then existing branch, would overcome definitely this obstacle.

This is an obvious and usual combination, the optical technician in specialty set the date of the patent application n. ° 102 634, with the current knowledge of the sector that had then (set out above) which includes all the essential aspects of the claimed solution mentioned patent and that would logically and predictable result as this solution ("would" and not just "could").

Moreover, as proven resulted in 06/18/2001, any technical Area electronic or telecommunications easily transpose the description given in said patent application published on 07.06.2001 for the scenario interação with an electronic device placed onboard an automobile, the from a WAP mobile (cf. fact 48).

That is, the creation of the 1st defendant, contained in patent in question does not Techn exceeded the ic in dus three lcor was re n t 13 existing at the respective date application no filling, so the requirement ac id Tiv in ade ven tiv.

If This was already so the date of the request on 18.06.2001, also later, when submitting the final version of the claims, in See Américo da Silva Carvalho, o />. brd., p. 14.

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Intellectual Property Court  
1 Judgment

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02-03-2005, would be.

Moreover, on 14/03/2002, it was published by WIPO a request for patent relating to a "remote monitoring method electrical installations domestic which have sensors and actuators via a terminal mobile radio "described as able to act on electrical equipment home by mobile phone via a WAP server or other mobile communication technology and whose independent claim the characterized by "both the sensors, the actuators can be remotely controlled via a wireless link from a Domestic control unit, and that the activation unit domestic control is made through a mobile radio network and contains the commands, queries and settings such as alarms triggered by the terminal user that are controlled through the mobile radio terminal via at least one user interface intuitive installed on the network "(see Facts 49 and 50).

As in the case with the patent application published 07-06-2001 and for the reasons I have set out above, if we take as relevant the appointed date of submission of the final version of revendicates (02-03-2005), the disclosure of 03.14.2002, in combination with the information announced by the companies Melody Interactive Solutions AB and Nordic Alarm AB and that request published patent in 2001 would lead to a technician in the art located temporally on 14.03.2002, with the current knowledge of the sector which then had, reached an obvious and logical solution claimed in the mentioned patent the respondent 1 °.

There exists thus no inventive already checked the date of the request made by the 1st defendant with the INPI (18/06/2001).

The exam and corresponding research conducted, the INPI reached published patent applications listed on 06/07/2001 and 14/03/2002 that, his understanding, were no obstacle to check the requirements on patentability of the invention disclosed by the 1st defendant, and granted P agin 73 8 5

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Intellectual Property Court

## 1 Judgment

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respective patent.

However, that research girded to the EPODOC database, getting out the technological and commercial disclosure that the authors succeeded demonstrate in the present case and that lines the relevance to above exposed, concluding in the direction of the alleged lack of novelty and inventive step.

However, the lack of novelty and inventive activity that takes Pat. No.

102634 is wound nullity, as stipulated in Article 113, point a)

the 2003 CPI, this void that has retroactive effect in relevant

general terms of Article 289 of the Civil Code and the limits of Article 36 of the CPI14.

Thus, given the above arama, it is concluded that the first request the authors should proceed.

The authors also claim that suffered danospatr im going on is quedevem be in demn iz adospe it is us Mr.

According to claim such damages arise from the initiated criminal proceedings against them, following a complaint lodged by the defendants in that was invoked which marketed products in violation of the exclusive right resulting from the patent title 1 of the defendant and whose operation was licensed to 2nd gear.

Now, owing to the differences between the patented and

systems developed and marketed by the authors, although the patent

1 ° defendant was valid the authors were not infringing the exclusive that just

result, and were forced to deal with the criminal case against

they brought as a result of that spent amounts allocated to

his defense in such a process, as well as any safeguard

fears that their customers come to demonstrate against the doubts raised

by the defendants as to the legality of the commercialization of the systems "XTraN" and

IJ Now in version introduced by Decree-Law no. 143/2008 of 25 July that. however, did not change the cited Article 36

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Intellectual Property Court

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"Frotcom Premium".

The claim of the plaintiffs is inscribed in the field of responsibility

Civil for an unlawful act, for which the Article 483, n. 1 of the Civil Code provides the next:

"One who intentionally or recklessly, unlawfully violates the right to another person or any legal provision intended to protect foreign interests is obliged to compensate the injured party for damages resulting from the breach. "

As is apparent from this standard, the obligation to compensate based on verification of the following assumptions: that the voluntary agent; the illegality; fault (because the charging to the title intentionally or negligently agent); damage; O causal link between the event and the damage.

a) to c F vo lu n tary doagen you, in order to objectively controllable or controllable by the human will.

b) the ITU llic, to a conduit that establishes a infraeção legal duty, and in general terms of no. 1 of article 483 of the Code Civil the two essential forms of illegality translate in violation of a subjective right of others on the one hand, and the violation of law aimed at protection of foreign interests on the other.

c) C u LP while charging the fact that the Lesante by way of intent (forward, necessary or possible), ie the intention to carry out the unlawful conduct that their agent configured or negligence (conscious or unconscious) as mere intention of wanting the cause of the wrongful act. Guilt is reflected in ethical and legal censure or judgment of personal failure in relation to the agent Lesante in the face of established law and with reference to the relationship between the unlawful act and the will of him, what will happen in general terms, when the

agent in the concrete situation could and should have done so as not to commit illegal and did not. Guilt is appreciated in the absence of other legal criteria for the diligence of a normal person in the face of the case circumstantialismo concreto (see Article 487 °, n. ° 2 of the Civil Code), or a person averagely diligent and careful, representing a judgment of reproach and

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Intellectual Property Court

1 Judgment

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ethical and legal censorship, to be able to act differently, with reference to the "Middle man" in social, cultural and professional that individual concreto.'5

d) D year, defined as loss or impairment of assets, rights or interests protected by law, equity or no equity, depending on whether or not economic content as whether or not such assessment pecuniária.lfi

e) N lid ade exodecausa because there can only be liability in respect of damage to the injured party probably would not suffer if it were not that conduct, ie the legally relevant cause of damage is one which, in theory, proves suitable for the production of such damage, according to the rules of common experience or known agent, with among us consecrated the doctrine of adequate causality (see Article 563 of the Civil Code).

Only the simultaneous verification of these assumptions of liability could be Lesante obliged to compensate the injured.

In this case it proved the request Pat. No. 102634, issued by 1st defendant, and their award by INP !, more proving the conclusion, on 09-10-2007 between one and two aft of that exploration license agreement patent, which was annotated to the respective registration 26-07-2007 (cf. facts 1 14, 15, 93 and 94).

It proved further that, on 15/04/2009, the 2nd defendant complained to ASAE against the authors (and 25 other companies), citing violation of exclusive of the patent, this complaint that gave rise to crime investigation n. ° 201 / 10.3TAPVZ the Public Prosecution Service Povia do Varzim, in which administrators Fernando Moreira, one of the author, and Valerius Marques, from 2 to author, accused were formed (cf. events 73, 74 and 75). 156

15 See Supreme Court Judgments 08-03-2007 and the Lisbon Relationship 27-11-2008, both available in Internei in <<http://www.dgsi.pt>>.

16 See Judgment of the Lisbon dc 27/11/2008. cited above.

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Intellectual Property Court

1 "Judgment

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However, since in the course of this action, it was given in those case n. 201 ° / 10.3TAPVZ the order of filing and prosecution opening the requested instruction by either defendant 1, which fell on the order, issued on 02.20.2014, by the Investigating Judge, to reject, by legally inadmissible, said education opening application, order that, the closing date of the discussion of this election, had not carried on trial (see fact 79).

The patent in question was considered zero in this judgment, in the absence novelty and inventive nature, this void that has retroactive effect set out the general terms of Article 289 of the Civil Code and limitations provided for in Article 36 of the CPI.

However, it was granted by the public authority with competence to do so, thus creating enjoyment of your expectations exclusive, in accordance with Article 101 0 of the 2003 CPI.

On the other hand, the criminal complaint presented is part of the scope of protection

criminal resulting exclusive right granted patent (cf. Article 3 of the 2 1 CPI17), dealing with the behaviors denounced relating to marketing products that the 1st defendant maintained and maintains that violate that exclusive.

So we have the following factual data that matters to consider: Patent granted by the public authority with the competence to do so; complaint-crime presented based on alleged infringement of this exclusive patent, translated in marketing, the authors of the products "XTraN" and "Frotcom Premium ", denouncing thus facts that defendants be understood 17 Under Article 321 of the CPI, entitled v i o l a t i o d o e x c l u t e n s i v o d a p a , d o m o d e i t g a v e t i l i d a d e o r a f t t o p o g r a f w a s r o d u c a r e n o s i n g l e n d u s t o r , i s p u n i s h e d w i t h i m p r i s o n m e n t u p t o 3 y e a r s o r w i t h a f i n e u p t o 3 6 0 d a y s w h o , w i t h o u t t h e r i g h t h o l d e r ' s c o n s e n t :

- a) Manufacturing the articles or products that are the subject of the patent or utility model topography of semiconductor products;
- b) Use or application of methods or processes that are the subject of the patent, utility model or topography of semiconductor products;
- c) importing or distributing products obtained by any of these methods.

As follows from the Article 329 of the same degree, their prosecution on a complaint.

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Intellectual Property Court

1 \* Judgment

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criminals

Now, assuming that "to ensure the stability, security, social peace, the rule of law, it is necessary to assure the citizen possibility, almost unrestricted, to report facts that it believes are criminals "if-excepting cases where such termination is made fraudulently (With knowledge of its falsity) or that their terms, which should be limited the narration of the facts, can integrate ase an insult to the honor of denunciados! or other rights that should prevail over that right complaint, it is concluded that the complaint falls within the exercise secured to the holder (or whoever he authorizes) the aforementioned exclusive, non detectable in the refined factuality any element relating to the context Subjective as it motivated the criminal complaint and to substantiate that the same It was made intentionally or at least gross negligence.

Thus, even assuming that the differences are evident between products sold by the authors of the patent and the object relative to which exist exclusively the date of said case (cf. Article 101, no. 1 in conjunction ° with Article 4, n. ° 2, both CPI), or that coincidence exists, the products are of the authors prior to the patent application, would always conclude that the complaint does not conflict with the rights of authors in the if they are to prevail, watching therefore the defendants the right to report facts who understood being criminals, in the light of consecrated criminal protection in Article 3 2 1 9 of the CPI18.

To such conclusion does not preclude the filing of the investigation and determined subsequent rejection of the instruction dispatch opening request, not yet become final for the purpose of this sentence (being right that the final judgment does not alter the meaning of what now is concluded) as it does not add any element to that judgment absence of fraud or gross negligence in presenting the criminal complaint.

18 Cf. Judgment of the Supreme Court of 09/09/2010, available online at <<http://www.dgsi.pt>>.

'Now in the version introduced by Decree-Law no. "143/2008 of 25 July, which. However, did not change the said article 321. °

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Intellectual Property Court

r Judgment

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Moreover, the level of subjective imputation, one can not say that the dock actuation fault has been and therefore deserving ethical and legal censure or judgment of personal failure, given the right made and with reference to the link between the fact and will.

In fact, the record in question was awarded to the 1st defendant by the entity administrative competent to do so and to which it was for the verification of legal conditions of the concession, given that the factuality determined not imply any element in the sense that there was bad faith on context of the application that he addressed the INPI.

In the concrete situation was not necessary, therefore, to a person averagely careful and diligent to act otherwise, ie not formulating the said patent application and, if it were to be granted, as not making assert their rights, including the criminal process against the behaviors that understand a violation of the exclusive result of that patent.

The same step, the 2nd defendant exercised his rights to the enjoyment of a operating license in respect of a granted patent and that while Therefore, it benefited from the presumption according to Article 4, n. 2 of IPC, nothing proving the effect that their actions overflowed the framework legally consented to such a licensee (see Article 32 c, n. 4 ° CPI), by that for this also does not check the subjective element of fault.

Even to understand that the accurate actuality embodied in presentation by the authors of exculpatory evidence in the investigation n. ° 201 / 10.3TAPVZ, spent by the author .The second time through its employees, the collection and analysis of information Pat. No. 102634, for criminal defense headquarters and the hiring of lawyers for their defense this criminal case (cf. events 76, 77 and 78), translates the occurrence of damage which are causal consequence of his complaint-crime, not filling other generators assumptions of the obligation to pay compensation lead to the insusceptibility of repair by the defendants.

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Intellectual Property Court

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Thus, in view of the above, it must conclude that becomes not show filled all cumulative verification assumptions provided Article 3 4 8 °, 0 1 n Civil Code which would apply in the dock obligation compensate authors.

It follows therefore that the claim for damages for them deduced

It must be dismissed.

We should finally assess oped oreconvenc io id id naldeduz it ope r is 1 u contraasautoras

The counterclaim is based on the alleged property damage and not property suffered as a result of marketing, by autoras-reconvindas, products "XTraN" and "Frotcom Premium", that the defendant-Counterclaimant says constitute an infringement of its exclusive Pat. No. 102,634.

In this context, the authors-reconvindas came invoke the exception of limitation of the right to compensation in relation to events prior to 17-09-2009 (since they have been reported in the defense reconvenção-17-09-2012), or 17-09-2007, should be understood that applies the five maturity years provided for in criminal headquarters.

The defendant-Counterclaimant came, in turn, argue that only became aware the conduct of the authors-reconvindas in March 2008 and that, with the start of criminal proceedings which originated in the complaint, broke off the deadline prescription that had begun in March 2008, and such interruption shall remain in force until such time as the right to compensation can be exercised, under Article 306, n. 1 of the Civil Code, which, taking into account the accession principle provided for in Article 71 of the EPC, only occur when

given charge or order of filing.

Let us see.

The Article 498 of the Civil Code set a deadline-rule of three years for prescription of the right to compensation resulting from liability for unlawful acts.

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Intellectual Property Court

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The shaft that rule, however, no. 3 to the rule mentioned establish one exception, namely that the apply time limit set by criminal law when more than three years, whenever the lawful breach is a crime for which the law provides higher prescription those three years.

To prevail the period specified in that n. ° 3, in addition to claiming (As it did in the counterclaim) should the party shows that the unlawful act, invoked as the basis of liability, includes the elements essential legal type of crime of violation of the exclusivity of a patent, provided for and Article punished 321 of the CPI (cf. STJ Judgments 11.18.1999 and 02-12-200420).

Anyway, in the case of claims for damages based on the practice of a crime, it must be made in criminal proceedings, unless they occur Some of the exceptions in Article 2 of the CPP 1, as in the case the file, which is concerned crime whose procedure on a complaint (Cf. 329. Articles CPI and 72 °, n. ° 1, c, CPP)

Now the pending criminal proceedings interrupts the limitation period provided for in Article 498 of the Civil Code, this interruption only cease with survey outcome by filing or prosecution, then ceasing offside position to the course of the limitation period laid down in Article 306, n. 1 of the Civil Code, which is the case even when the procedure on a complaint by exercising this the interruptive effect established in the said Article 306, no. 1 (cf. Judgment of the Lisbon Relationship 25-03-2010 and jurisprudence cited therein, especially the STJ Judgments 31-01-2007 and 13-10-200921)

And if so, then it must be concluded that the claim for damages of 1 ° defendant It was less timely, lying within the time set out in rule Article 498 of the Civil Code, improcedendo therefore the objection of limitation invoked by the authors-reconvindas.

20 Arestos available on the Internet at <<http://www.dgsi.pt>>.

21 Aresto available online at <<http://www.dgsi.pt>>.

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Intellectual Property Court

1 Judgment

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As mentioned above, the purpose of the request for compensation by the claimants, the claim under examination is also part of the field of liability for an unlawful act, which is based on verification of following assumptions: that the voluntary agent; the illegality; the guilt (Attribution to the fact that the agent title intentionally or negligently); damage; the nexus causality between the fact and the damage.

In addition, however, that apart from the general scheme laid down in Article 483 of the Civil Code concerning compensatory the industrial property rights

They began to enjoy the specific protection enshrined in 338. ° -L CPI, whose as in force was introduced by Law no. 16/2008 of 1 April,

transposed into national law of Directive 2004/48 / EC (the "Enforcement Directive").

Based on Article 13 ( "compensation for damages") of said Directive that Article 338 ° -L (entitled the transposed array)

It provides:

1 - Who, intentionally or recklessly, unlawfully violates the right to industrial property

others, is obliged to compensate the injured party for damages resulting from the breach.

2 - In determining the amount of compensation for damages, the court must namely meet the profit obtained by the infringer and the damages and profits loss suffered by the injured party and should take into account the costs incurred with protection, research and the cessation of the conduct injurious to its right.

3 - To calculate the compensation due to the injured party, shall take account of the importance of the revenue resulting from the unlawful conduct of the offender.

4 - The court must still meet the non-material damage caused by the conduct of the offender.

5 - The inability to fix, in accordance with the preceding paragraphs, the amount of actual damage suffered by injured party, and since this does not preclude, may court alternatively establish a fixed amount using the equity, which has the base, at least the remuneration that would have been earned by the injured party if the offender had requested authorization to use the industrial property rights concerned and burdens to the protection of industrial property rights, as well as the research and cessation of harmful conduct of their right

6 - where, in relation to the injured part of the conduct established practice constitutes the offending  
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Intellectual Property Court

10 Judgment

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or proves particularly burdensome, the court may determine the compensation due to him using the cumulation of all or some of the aspects set out in paragraphs 2-5.

7 - In any case, the court shall set a reasonable amount to cover the costs, properly supported, supported by the aggrieved party to the research and cessation of the conduct injurious to its right.

In the headquarters of the claim for damages that deducted, the defendant invokes-Counterclaimant the violation of exclusive of his patent no. "102634, embodied in marketing, the authors-reconvindas, products "XTran" (the 1st author) and "Frotcom Premium" (the 2nd author).

It happens, however, that the patent in question was considered zero in this sentence, for lack of novelty and inventive step.

Such nullity has retroactive effect provided for in general terms of Article 289 of the Civil Code, as the limitations set forth in Article 36 of the CPI.

That is, considering the above mentioned nullity, the defendant-Counterclaimant not watch any industrial property rights on the said patent.

As mentioned above, the assumption is intended unlawful conduct materializing infração of a legal duty, and in general terms

n. 1 of article 483 of the Civil Code the two essential forms of illegality is translate in violation of a personal right of others on the one hand, and violation of law aimed at protecting foreign interests on the other. In the terms Special under paragraph. 1 of 338 ° -L CPI the illegality arises from the infringement one industrial property right of others.

Now, given that there is, by the defendant-Counterclaimant any industrial property rights or other rights or interests that should be protected by the invoked via indemnity, forcible becomes conclude that, fails to meet the unlawful assumption, the claim that he deducted must be rejected.

Furthermore, even though it has determined the occurrence of damage patrimonial and non-patrimonial band by the defendant-Counterclaimant (cf. 99 and facts 100), the fact remains that was to demonstrate that such damages were (and  
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Intellectual Property Court

1 "Judgment

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be) the authors result of the duct-translated in reconvindas marketing of the products "XTran" and "Frotcom Premium" (cf. fact 100 proven and unproven facts xvii., xviii. x / x.).



Thus, given that the findings do not substantiate any unlawful conduct that has been practiced by the authors-reconvindas or causation occurs in relation to damages, it is concluded that, failure to complete the cumulative verification assumptions provided, or in Article 483 °, n. ° 1 of the Civil Code or in Article 338. L °, n. ° 1 of the CPI, there is no place to compensation by the defendant petitioned-Counterclaimant, improcedendo, therefore also this their claim.

In short, it is analyzed all the issues raised in this claim, action must be judged partially valid and the improcedendo reconvenção in its entirety, pursuant outlined above.

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V - Decision

Thus all the above and,

1 - thought to be in part the present application, and consequence:

a) It is declared invalid the national invention patent n. 102634 °

"INTELLIGENT MULTI SYSTEM USES FOR MOBILE"; and

b) absolve themselves defendants in claims raised by the authors.

2. - It is believed dismissed the counterclaim brought by the 1st defendant against authors and, consequently, will the same acquitted of applications for compensation formulated against them.

Costs of action by the plaintiffs and the defendants in the middle of proportion to each assigning is that the 1st defendant receives legal aid (Article 446 °, n 1 and CPC 2 and today, 527 Article 1 and 2 NCPC).

The counterclaim of the expense would be borne by the first defendant (Article 446 °, n.0 £ 1 and 2 l 'dc tigiia 8 4 85

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Intellectual Property Court

The Chamber I

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and the CPC. Today, article n ° 527. ° 1 and 2 NCPC). However, the same benefits legal aid.

share price and counterclaim: the curative act set in.

Register and notify.

After transit, meets the provisions of Article 35, no. 3 ° CPI.

\*

Slogan that only now utters sentence because of the accumulation service and fulfillment of urgent priority service, still should be noted that, under the new judicial organization, they were and continue to be referred to this court processes related to industrial property rights copyright and related pending rights in trade and other courts around the parents.

Lisbon, 12.10.2015

(Act done in computer supoitc with affixing electronic signature)

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