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**D E C I S I O N**  
**of 18 September 2001**

**Case Number:** T 0270/00 - 3.5.1

**Application Number:** 95915297.6

**Publication Number:** 0707773

**IPC:** H04N 7/20; H04B 7/15; H04N 7/08,  
7/10; H04H 3/00

**Language of the proceedings:** EN

**Title of invention:**  
Point-to-multipoint cellular television transmission system

**Applicant:**  
Koninklijke Philips Electronics N.V.

**Opponent:**  
-

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 54

**Keyword:**  
"ADA (arrangments for deposit accounts)"

**Decisions cited:**  
"Novelty (no)"

**Catchword:**  
-



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Boards of Appeal

Chambres de recours

**Case Number:** T 0270/00 - 3.5.1

**D E C I S I O N**  
**of the Technical Board of Appeal 3.5.1**  
**of 18 September 2001**

**Appellant:** Koninklijke Philips Electronics N.V.  
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**Representative:** Groenendaal, Antonius Wilhelmus Maria  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 13 October 1999  
refusing European application No. 95 915 297.6  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** S. V. Steinbrener  
**Members:** R. R. K. Zimmermann  
S. C. Perryman

## Summary of Facts and Submissions

- I. The appeal concerns European patent application No. 95 915 297.6 (international publication No. WO 95/31070) claiming 6 May 1994 as date of priority.
- II. In a decision posted in writing on 13 October 1999, the examining division responsible for the examination of the application refused the application for the reason that the subject-matter of patent claim 1 was not new with regard to the prior art document cited by the examining division as D1 (EP-A-0 429 200, published 1991). Claim 1, which has been amended by the applicant in the course of a hearing held before the examining division on 24 September 1999, reads as follows:

"A point-to-multipoint cellular television system (1) including at least two cells, each provided with a relatively low-power transmitter station (T1, ..., T19) for cell-wise transmission of at least one television signal in a cell (C1, ..., C19) of the cellular system (1) in which cells are adjacent to at least one other cell of the cellular system, and in which the transmitter stations (T1, ..., T19) transmit, at least in part, the same television signals in a microwave band, the system (1) further including a plurality of receiver stations (R1, ..., R8) comprising a directional receiving antenna (RA1, ..., RA8) for receiving a television signal from one of the transmitter stations (T1, ..., T19), characterized in that each transmitter station (T1, ..., T19) is located at a circumference (CF) of its cell (C1, ..., C19) of the cellular system (1), and is provided with one single directional transmitting antenna (TA1, ..., TA7) for substantially radiating at least one television

signal into its cell (C1, ..., C19)."

- III. Against this decision the applicant filed a notice of appeal on 2 December 1999 in the Dutch language and in the language of proceedings, requesting reversal of the decision and grant of a European patent, and as an auxiliary measure oral proceedings. A reduced appeal fee was paid on the same day; the grounds of appeal were subsequently filed on 15 February 2000.
- IV. According to the appellant document D1 disclosed a broadcast network in which each transmitter unit was located within an area expressly defined therein as "cell" or "reception area" of the corresponding transmitter unit, and each transmitter unit comprised two or more directional antennas. In the embodiments shown in Figures 3 and 4 the network was a triangular lattice and comprised a honeycomb structure of hexagonal cells, at the center of which a corresponding pair of 180°-sector antennas was located. The square lattice network shown in Figures 5 and 6 of document D1 had similar features. According to claim 1, however, each transmitter station was located at the circumference of its cell and was provided only with one single directional transmitting antenna so that the invention had to be regarded as novel in view of document D1.
- V. In preparation of oral proceedings the Board communicated a provisional opinion to the appellant indicating in particular that the examining division seemed to have been right in raising a novelty objection with regard to document D1. In response to the summons to oral proceedings the appellant filed a letter dated 23 August 2001, informing the Board that

the appellant withdrew its request for oral proceedings and that instead it requested a decision be taken on the file as it stood; if nevertheless oral proceedings will take place a representative of the appellant would not be present. Subsequent to this letter the summons were cancelled.

- VI. In a further letter dated 31 August 2001 the appellant withdrew the patent application "on the condition that any fee is refunded". If no refund was possible the application should not be considered withdrawn. In addition the appellant declared the automatic debit order from deposit account 28090021 as "unconditionally revoked".

### **Reasons for the Decision**

1. The Board finds it necessary to decide on the appeal as the conditional withdrawal of the application dependent on the appeal fee being returned could not, even if admissible, be given effect for reasons which will appear.
2. The appeal complies with the requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC, as well as with the requirements concerning the reduction of the appeal fees, which is allowed an applicant who avails himself of the options provided in Article 14(4) EPC. The appeal is thus admissible.
3. The revocation of the automatic debit order from deposit account 28090021 submitted by the appellant with letter dated 31 August 2001 has no legal consequence regarding the admissibility of the appeal.

According to point 13 of the Annex A.1 to the Arrangements for deposit accounts (ADA) published in OJ 1999, Suppl. to No. 2/99, page 13, OJ 2000, 62 "debits cannot be revoked in respect of fees whose decisive payment date precedes the date on which the revocation was received". Since in the present case the decisive payment date is the expiry of the time limit set in Article 108, sentence 2 EPC the revocation has been filed too late to affect payment of the appeal fee. Accordingly the appeal fee has to be considered validly paid.

The valid payment of the appeal fee itself is a matter of fact, which cannot be undone and which is not at the disposal of the appellant.

4. As to the merits of the case, the primary issue to be decided is whether the examining division was right to refuse, in the light of document D1, the application for lack of novelty.

This document relates to broadcast networks which are "particularly suitable for microwave broadcast systems such as Microwave Video Distribution Systems (MVDS) and Microwave Multi-point Distribution Systems (MMDS)" (see D1, column 1, lines 4 to 9). Since a Microwave Multi-point Distribution System (MMDS) is a point-to-multipoint, multi-cell system for TV transmissions by microwave the prior art broadcast network is of the type defined in the pre-characterising portion of claim 1 comprising relatively low-power transmitter stations associated to the cellular system and a plurality of receiver stations. As follows from the radiation pattern shown in Figure 2, the receiving as well as the transmitting antennas used are directional.

These facts have not been contested by the appellant.

The crucial point to be considered is, however, whether or not in document D1 the characterising feature is also disclosed, i.e. the feature that each transmitter station is located at a circumference of its cell and provided with one single directional transmitting antenna for substantially radiating at least one television signal into its cell.

At a first glance the question has to be answered in the negative: as argued by the appellant document D1 (see e.g. column 3, lines 40 to 53) discloses transmitter units, each of them having two 180°-sector (or four 90°-sector) antennas operating either at frequency F1 or F2 and expressly defines, as "cells" or "reception area", the area which is covered by the beams of the two (or four) sector antennas so that each transmitter unit is located at the center of a corresponding "cell". In the context of Article 54, however, it is primarily the patent claim which defines the scope of protection and which has thus to be examined for determining whether it includes matters forming part of the prior art.

Having regard to said feature in issue, such an examination first requires a close consideration of the technical meaning of the term "cell" as used in claim 1. In the general context of broadcast and communication networks, the term refers to the part of the reception area of a transmitter station in which compared with the other stations using the same frequency (and/or polarisation) for a selected channel its signal is the strongest and thus the best to be used. This implies that there is a unique relationship

between each cell and the best frequency, which allows a receiver to select, at each location of the network, the transmitter station providing the best reception quality.

For the concept of cells the internal structure of the transmitter stations is irrelevant, however. The actual situation in a cell area may require more than "one single antenna" as explained in the application with reference to Figure 2 where for example the additional antenna of a repeater station RS is used. Repeaters usually operate at the same frequency as the transmitter station so that the unique relationship between cell and frequency is basically preserved. The application in fact calls the coverage area a "sub-cell" (see page 7, lines 2 to 9) if instead of a repeater an additional transmitter station is provided so that again the use in the application complies with the ordinary concept of cells. In fact, neither the claims nor any other parts of the application indicate that a particular transmitter site uses more than one frequency per channel for broadcasting the signal. The Board concludes therefrom that the term "cell" is used according to its normal technical meaning throughout the whole application including claim 1.

The feature in issue defines the transmitter station as being provided with "one single" antenna. In the light of the embodiments shown in Figures 2 and 5 to 8 of the application this means that each transmission station does not use more than one radiator per channel, i.e. it does not transmit the signal in one cell at more than one frequency per channel, which is in conformity with the normal concept of a cellular system.



For document D1 however, it is sufficient to consider only the embodiment of Figure 3, which displays hexagonal "cells" which do evidently not bear such a unique relationship with the frequency of the signal received from the corresponding transmission station. On the contrary, the document expressly teaches that a receiver even within one "cell" must discriminate between the signals of different frequencies, namely either F1 or F2 (see document D1, column 2, lines 52 to 55, column 3, lines 54 to 58, claim 8). The frequency to be selected is thus not related to the hexagonal "cell" but to the 180°-sector within such "cells". Therefore the term cell as used in the application and in particular in present claim 1 does not apply to the hexagonal "cells" of document D1 but to the individual 180°-sectors. With respect to these sectors, however, the transmitter stations are indeed provided with one single directional transmitting antenna located on the circumference and thus on the circumference of the cell in terms of present claim 1.

The characterizing feature of claim 1 is thus fully anticipated by the prior art so that the application does not comply with the requirement of novelty as set out in Articles 52(1) and 54 EPC, and the appeal must be dismissed.

5. The request for refund of the appeal fees cannot be allowed since the only legal basis for such a refund, if a valid appeal has been filed, is Rule 67 EPC whose requirement that the appeal be allowed has not been fulfilled.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

M. Kiehl

S. V. Steinbrener