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D E C I S I O N
of 9 February 2005

Case Number: T 0482/02 - 3.5.1

Application Number: 96911607.8

Publication Number: 0819354

IPC: H04N 5/445, H04N 5/50

Language of the proceedings: EN

Title of invention:
Interactive program guide systems and processes

Patentee:
United Video Properties, Inc.

Opponents:
Interessengemeinschaft für Rundfunkschutzrechte GmbH
Schutzrechtsverwertung & Co. KG
Herbert Smith

Headword:
Program Guide/UNITED VIDEO PROPERTIES

Relevant legal provisions:
EPC Art. 58, 99, 104
EPC R. 55(a), 56(1)(2), 100(1)

Keyword:
"Admissibility of opposition (no)"
"UK Partnership"

Decisions cited:
G 0003/99

Catchword:

In accordance with decision G 3/99, where it is doubtful whether an opposition is filed on behalf of a body which enjoys legal personality in its own right or on behalf of several natural persons acting in common, the opponents (here a UK partnership) should be invited to establish that the body is a legal person or an equivalent thereto. If this is not established, the opposition is to be considered as having been filed on behalf of the several natural persons as common opponents. In that case the opponents still have to furnish the names and addresses of the partners in order to comply with Rule 55, sub-paragraph (a) EPC. If this information is not received within a period specified by the Board, the opposition must be rejected as inadmissible under Rule 56(2) EPC, irrespective of whether or not such information would have been sufficient to prevent rejection under Rule 56(1) EPC.



Case Number: T 0482/02 - 3.5.1

I N T E R M E D I A T E D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 9 February 2005

Appellant: United Video Properties, Inc.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 11 March 2002
revoking European patent No. 0819354 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: S. V. Steinbrener
Members: R. S. Wibergh
E. Lachacinski

Summary of Facts and Submissions

- I. This is an appeal by the patent proprietor of European patent No. 0 819 354 against the decision of the opposition division to revoke the patent. The present intermediate decision is concerned only with the issue of admissibility of the opposition filed by respondents (opponents) 02.
- II. Opposition 02 was filed on 30 November 2000 in the name of Herbert Smith, a partnership in the United Kingdom consisting of "either solicitors or registered foreign lawyers", as stated on the stationery. It was signed by Mr Moody, a solicitor, acting as authorised representative for the opponents. The authorisation for Mr Moody had apparently been signed by Mr Rich, a partner in the firm, as evidenced by letter dated 31 January 2002.
- III. By letter dated 1 February 2002, respondents 02 filed an excerpt from the Partnership Act 1890 as statutory proof for the power of Mr Rich to act on behalf of the firm and to bind the firm. Also enclosed was section 4 of the Business Names Act 1985, which according to respondents 02 allowed "a partnership of more than 20 partners (Herbert Smith has over 100) to carry on business in the firm name provided a list of partners is available for inspection at the place of business of the firm during office hours".
- IV. According to the decision under appeal, taken at oral proceedings on 7 February 2002 and posted on 11 March 2002, the two oppositions filed against the grant of the patent were admissible, respondents 02 being

regarded as joint opponents consisting of the individual partners of a partnership. The patent was revoked on the grounds of lacking novelty and inventive step.

- V. Shortly after this decision was taken the Enlarged Board of Appeal issued its decision G 3/99 (OJ EPO 2002, 347) concerning oppositions filed in common by two or more persons.

The Enlarged Board of Appeal held (see points 10 to 15 of the reasons) that "any person" in Article 99 EPC should be construed in line with Article 58 EPC as meaning: (a) any natural person, (b) any legal person or (c) any body equivalent to a legal person by virtue of the law governing it. Where it was doubtful whether the opposition was filed on behalf of a body which enjoyed legal personality in its own right, or on behalf of several natural persons acting in common, the opposition division should invite the opponents to establish that the body was a legal person or an equivalent thereto. If this was not established, the opposition was to be considered as having been filed on behalf of the several natural persons as common opponents. An opponent had to be determined before the expiry of the time limit for opposition, subject to any deficiency being remedied under Rule 56(2) EPC. A person who was not originally named as a common opponent could not later join the opposition or the subsequent appeal procedure. If one or more of the common opponents intended to withdraw from the proceedings, this fact had to be notified in due time to the EPO and to the other parties. Also members who had ceased to belong to the group of common opponents

would still remain subject to any decision as to cost to be taken under Article 104 EPC. There must be a common representative who was alone entitled to act on behalf of all the common opponents taken as a whole.

VI. The patent proprietor filed a notice of appeal on 13 May 2002. The appeal fee was paid on 10 May 2002 and the statement of grounds was filed on 19 July 2002.

VII. As to the admissibility of opposition 02 the appellant (patent proprietor) has argued essentially as follows:

According to decision G 3/99 "any person" in Article 99 EPC must be construed in line with Article 58 EPC, the stipulation specifying who was entitled to file a European patent application. According to the UK Patent Office Practice Manual (December 1998), paragraph 7.02, an application for a patent might be made by

"one or more individuals or a corporate body but not a firm, partnership or body which is unincorporate, although in such cases application may be made by individual partner jointly. In the case of a limited partnership, the application may be in the names of all personally responsible partners".

The CIPA Guide to the Patents Act stated at paragraph 7.03 headed "Who may apply for a patent (subs. (1))" that

"the term 'person' includes 'a body of persons corporate or unincorporate'. Thus, a company may be a 'person', as may partners but, in the latter case, it is the partners themselves who are 'persons', not the

partnership since a partnership under English law is not an entity distinct from its members. The general legal rule under English law as to ownership of personal property is, therefore, that an owner may be a single individual or a legal entity, such as a company or other form of corporation".

Furthermore, according to the RSC (Rules of the Supreme Court of England and Wales) Order 81, partnerships as claimants or defendants must be identified by name. This meant in the present case that if the appellant were awarded costs in respect of the conduct of respondents 02 and if respondents 02 did not comply with the award, recovery would have to be sought through the courts where the identities of the partners of the firm of Herbert Smith would have been required.

The evidence supported the appellant's position that the partnership Herbert Smith was not a legal person and that opposition 02 would only have been admissible if it had been filed in the name of the partners who made up the firm. It had however been filed in the name of the partnership. While partners might act in the name of the firm, the firm might not act in the name of the partners.

- VIII. By communication dated 26 March 2004, the Board, referring to the principles set out in decision G 3/99, went into the question whether the firm Herbert Smith could be regarded as a legal person or an equivalent body in the meaning of Article 58 EPC and invited respondents 02 to file any further proof which could serve to establish Herbert Smith as such.

The Board furthermore stated that:

"/The/ following points are to be considered:

(i) may the partners of the firm be regarded as an association of natural persons, and if so

(ii) may the identity of Opponents 02 "Herbert Smith" be corrected retroactively pursuant to Rule 56(2) EPC by making known the identities of the persons concerned and having the opposition properly signed by these persons or their representative appointed according to Rule 100(1) EPC?

In any case, the evidence allowing such correction has not been presented and if such presentation were desired any evidence should be filed in accordance with Rule 56(2) EPC within the time limit set."

- IX. Respondents 02 did not reply to the communication, nor have they made any other submissions in the course of the appeal proceedings.
- X. Respondents 01 indicated in their last submission that they neither wished to comment on the issue of admissibility of opposition 02, nor requested oral proceedings in this respect.

Reasons for the Decision

1. The appeal by the patent proprietor meets the requirements referred to in Rule 65(1) EPC and is, therefore, admissible.

2. Opposition 02 was filed in the name of Herbert Smith, a law firm organised in the form of a UK partnership. It was signed by a legal practitioner who had apparently been authorised by one of the partners in the firm.

3. Decision G 3/99 of the Enlarged Board of Appeal (see point 11) states that where it is doubtful whether an opposition is filed on behalf of a body which enjoys legal personality in its own right or on behalf of several natural persons acting in common, the opponents should be invited to establish that the body is a legal person or an equivalent thereto. If this is not established, the opposition is to be considered as having been filed on behalf of the several natural persons as common opponents.

In the present case the Board finds that the appellant has succeeded in raising such doubts (see point VII above). For this reason the Board, in its communication dated 26 March 2004, invited respondents 02 to furnish proof as to their legal status, which they did not do. It follows from decision G 3/99 that respondents 02 are to be regarded as natural persons acting in common.

4. As to these natural persons acting in common, either the indication "Herbert Smith" in the notice of opposition was insufficient to determine their identities, in which case the opposition is inadmissible pursuant to Rule 56(1) EPC, or it was sufficient. In the latter case, ie if the indication could be understood as identifying unambiguously the individual partners of the firm on the date the opposition was filed, respondents 02 still had to furnish the names and addresses of these partners in

order to comply with Rule 55, sub-paragraph (a) EPC. As explained by the Enlarged Board of Appeal, if the EPO does not have this information it is neither possible to determine whether the opposition has been properly signed by a common representative, nor who is to pay the costs which might be awarded to another party of the proceedings. Therefore, the Board's communication of 26 March 2004 also served the purpose of inviting respondents 02 in accordance with Rule 56(2) EPC to file the required data about the members of the group. Since there was no reply to the communication this information remains unknown. It is thus not necessary for the Board to decide whether the indication "Herbert Smith" in the notice of opposition was sufficient to determine the identities of respondents 02 so as to prevent rejection of the opposition under Rule 56(1) EPC since the opposition does in any case not fulfil the requirements of Rule 55, subparagraph (a) EPC and must be rejected as inadmissible under Rule 56(2) EPC.

Order

For these reasons it is decided that:

1. Insofar as relating to the admissibility of the opposition filed by respondents 02, the decision under appeal is set aside.

2. The opposition filed by respondents 02 is rejected as inadmissible.

The Registrar:

The Chairman:

M. Kiehl

S. Steinbrener