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**Datasheet for the decision  
of 12 December 2008**

**Case Number:** T 0222/05 - 3.5.04

**Application Number:** 97921757.7

**Publication Number:** 0968608

**IPC:** H04N 7/16

**Language of the proceedings:** EN

**Title of invention:**

Receiver/decoder and method of reception

**Patentee:**

Nagra Thomson Licensing

**Opponent:**

IGR GmbH & Co. KG

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 123(2)

**Relevant legal provisions (EPC 1973):**

-

**Keyword:**

"Amendments - added subject-matter (yes)"

**Decisions cited:**

T 0383/88

**Catchword:**

-



Case Number: T 0222/05 - 3.5.04

**DECISION**  
of the Technical Board of Appeal 3.5.04  
of 12 December 2008

**Appellant:** Nagra Thomson Licensing  
(Patent Proprietor) 46, Quai Alphonse Le Gallo  
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**Representative:** Wenger, Joel-Théophile  
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**Respondent:** IGR GmbH & Co. KG  
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**Representative:** Kinnstätter, Klaus  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 6 December 2004  
revoking European patent No. 0968608 pursuant  
to Article 102(1) EPC 1973.

**Composition of the Board:**

**Chairman:** F. Edlinger  
**Members:** A. Teale  
T. Karamanli

## Summary of Facts and Submissions

- I. The appeal is against the decision of the opposition division to revoke European patent No. 0 968 608.
- II. The proprietor appealed against the decision in its entirety. With a subsequently filed statement of grounds of appeal the appellant (proprietor) filed amended claims according to a main and an auxiliary request and *inter alia* requested oral proceedings if the board intended to reject both the main and auxiliary requests.
- III. The respondent (opponent) requested that the appeal be dismissed and made an auxiliary request for oral proceedings. In a further submission the respondent argued that neither the main nor the auxiliary request was allowable.
- IV. Claim 1 according to the main request reads as follows:  
  
"Apparatus in the form of a set top box (2019) including a receiver/decoder (2020) for use in reception of a scrambled television programme and transformation of said programme into a video signal for transmission to a television set (2022), the apparatus including first interacting means (3021) for interacting with a user's credit or bank card (3017) to read information carried by the card (3017), the apparatus being characterised by further comprising at least a slot (2023) provided on the set top box and a user's card (3020) inserted into the slot and, separate from said first interacting means (3021), second interacting means (3019) associated with said slot

(2023) for interacting with the user's card (3020) to read information carried by the user's card (3020), and further comprising receiving means for receiving on the user's card subscription rights from a Subscriber Authorization System (3002), subscription rights stored on the user's card (3020) being modifiable in response to a payment by means of the credit or bank card (3017)."

The wording of claim 1 according to the auxiliary request is the same as that according to the main request except that after the expression "Subscriber Authorization System (3002)," the following passage has been inserted "extracting means for extracting from a MPEG-2 stream a corresponding Entitlement Control Message (ECM) and passing the ECM to the user's card, and, in the user's card, means for controlling whether the user has the subscription rights to decrypt the ECM for accessing the television programme,".

- V. In the statement of grounds of appeal the appellant *inter alia* set out the basis for the amended claims and argued in particular that the expression in claim 1 of both the main and auxiliary requests "subscription rights stored on the user's card (3020) being modifiable in response to a payment" was directly and unambiguously derivable from the application as originally filed. The original specification (page 21, line 16 onwards) described the sequence of events which were involved in a financial transaction using a credit card, and which resulted, by the SAS sending the appropriate EMM, in subscription rights being sent to the user's card; see page 23, lines 13 to 15, and page 10, lines 8 to 9.

- VI. In a letter dated 26 October 2006 the respondent informed the board that it had changed its name and provided a corresponding extract from the German commercial register.
- VII. In letters dated 14 November 2006 and 5 January 2007 the appellant informed the board that it too had changed its name and provided the corresponding minutes of the shareholders meeting and a copy of the public announcement of the change.
- VIII. In an annex to a summons dated 8 September 2008 to oral proceedings the board expressed its preliminary opinion on the appeal, raising *inter alia* objections under Article 123(2) EPC regarding added subject-matter in claim 1 of both the main and auxiliary requests.
- IX. In a letter dated 6 November 2008 the appellant stated that he would not attend the oral proceedings, but did not comment on the substance of the case.
- X. In accordance with Rule 71(2) EPC 1973 and Article 15(3) RPBA (OJ EPO 2007, 536) oral proceedings before the board were held on 12 December 2008 in the absence of the appellant. The appellant had requested in writing that the decision under appeal be set aside and that the patent be maintained on the basis of the claims according to the main request filed with the statement of grounds of appeal, and alternatively, that the patent be maintained on the basis of the claims according to the auxiliary request filed with the statement of grounds of appeal.

The respondent requested that the appeal be dismissed and argued essentially as follows. The board had raised objections under Article 123(2) EPC against claim 1 of both the main and auxiliary requests. The onus was upon the proprietor to prove that these objections were unfounded. This the proprietor had not done. Moreover page 2, lines 18 to 23, of the application as originally filed did not disclose subscription rights being modified on a user's card.

XI. At the end of the oral proceedings the board announced its decision.

### **Reasons for the Decision**

1. *The applicable version of the EPC*

The present decision was taken after the entry into force of the revised European Patent Convention (EPC) on 13 December 2007. At that time, the European patent in suit had already been granted. The board has therefore applied the transitional provisions in accordance with Article 7(1), second sentence, of the Revision Act of 29 November 2000 and the decisions of the Administrative Council of 28 June 2001 (Special edition No. 1, OJ EPO 2007, 197) and 7 December 2006 (Special edition No. 1, OJ EPO 2007, 89). Articles and rules of the revised and former texts of the EPC are cited in accordance with the practice described on page 4 of the 13th edition of the Convention.

2. *Admissibility*

The appeal is admissible.

3. *Added subject-matter, Article 123(2) EPC*

The invention relates to a set top box for receiving scrambled digital television signals from a satellite for display on a television set. In order to view certain channels or an individual programme, or to download a file, the user may have to pay using a credit or bank card inserted in the set top box. The original description refers to "Pay-Per-View" television and "Pay-Per-File" (see page 1, lines 4 to 8), implying an entitlement to view only one programme or a group of programmes. The term "subscription" which is used in claim 1 implies an entitlement for a specified period of time, usually of a greater duration than merely one programme. Indeed the description distinguishes between "subscription" modes and "Pay Per View" modes; see page 9, lines 19 to 21, and page 11, lines 1 to 3, of the original description. A Subscriber Authorization System (SAS) sends, amongst other things, subscription rights to the user's card, also inserted in the set top box. The SAS also sends EMMs (Entitlement Management Messages) or ECMs (Entitlement Control Messages), these rights allowing the unscrambling of the corresponding channels, programme or file. The latter message (ECM) is a separate message which is dedicated to one scrambled programme only or a set of scrambled programmes if part of the same commercial offer; see page 10, line 21, to page 11, line 24, and page 13, line 8, to page 14, line 4, of the application as originally filed. The set top box is

linked to a communications server (3022) at a remote centre; see figure 9. This connection allows direct payment, causing an appropriate EMM to be immediately sent to the set top box to authorize the purchase; see page 23, lines 13 to 16, of the application as originally filed. However, in order to reduce the number of transactions required with the remote centre and to improve security by reducing the number of occasions on which the bank or credit card details need to be transmitted, the user can also purchase reception credits which are stored on the user's card. The number of credits is increased on receipt of authorization information to indicate an authorized payment using the credit or bank card and reduced when subscription rights are purchased; see page 2, lines 12 to 29, of the application as originally filed.

Claim 1 of both the main and auxiliary requests differs from claim 1 as originally filed *inter alia* in the feature of "subscription rights stored on the user's card (3020) being modifiable in response to a payment". In the statement of grounds of appeal the appellant argued that a basis for this feature was provided by page 21, line 16 onwards, page 23, lines 13 to 15, and page 10, lines 8 to 9, of the application as originally filed. According to the cited passages, reception credit information stored in the user card is modified on receipt of authorization information; see, for instance, page 2, lines 18 to 29, of the original description. This is the only disclosure of modification of information stored on the user card in response to payment. The available credits may be reduced by a determined amount in response to reception of a programme or file; see, for instance, page 2,



lines 12 to 17, of the application as originally filed. Page 23, lines 13 to 15, to which the appellant refers in the statement of grounds of appeal, relates to direct payment of a program event purchased, and not to the modification of subscription rights stored on the user's card; see page 20, lines 12 to 15, of the application as originally filed. The board is consequently of the view that the feature of "subscription rights stored on the user's card (3020) being modifiable in response to a payment" is not directly and unambiguously derivable for the skilled person from the application as originally filed.

This reasoning also applies to claim 1 of the auxiliary request because the inserted passage (see point IV above) relates to the extracting of a corresponding ECM and the passing of the ECM to the user's card. Since the ECM is dedicated to one scrambled programme only or to a set of scrambled programmes, it does not restrict the added feature of modifiable subscription rights stored on the user's card to subject-matter which is directly and unambiguously disclosed in the application as originally filed.

According to established case law of the boards of appeal, the burden of proof that amendments to the patent comply with Article 123(2) EPC is borne by the proprietor; see, for example, T 383/88, reasons point 2.2.6. The proprietor has failed to discharge this burden, since he has not demonstrated that the amended claims do not comprise added subject-matter. Hence the board finds that the amendments in claim 1 according to both the main and auxiliary requests do not satisfy Article 123(2) EPC.

4. *Conclusion*

Since the patent amended according to the main and auxiliary requests does not meet the requirements of the EPC, neither request is allowable.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

D. Sauter

F. Edlinger