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**Datasheet for the decision
of 20 November 2009**

Case Number: T 0149/07 - 3.4.01

Application Number: 96850095.9

Publication Number: 0743535

IPC: G01S 3/00

Language of the proceedings: EN

Title of invention:
System for surveillance

Patentee:
TELEFONAKTIEBOLAGET LM ERICSSON (publ)

Opponent:
Försvarets Materialverk

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)
RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):

EPC Art. 56

Keyword:

-

Decisions cited:

T 0890/02

Catchword:

-



Case Number: T 0149/07 - 3.4.01

D E C I S I O N
of the Technical Board of Appeal 3.4.01
of 20 November 2009

Appellant: Försvarets Materialverk
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
15 December 2006 concerning maintenance of
European Patent No. 0743535 in amended form.

Composition of the Board:

Chairman: B. Schachenmann
Members: G. Assi
H. Wolfrum

Summary of Facts and Submissions

I. An opposition was filed against the European patent No. 0 743 535 (application number 96850095.9) as a whole. The opposition was based on the ground pursuant to Article 100(c) EPC 1973 that the subject-matter of the patent extended beyond the content of the application as filed (Article 123(2) EPC 1973). Moreover, the opposition was based on the ground pursuant to Article 100(a) EPC 1973 that the subject-matter of the patent was not patentable within the terms of Articles 52(1) and 56 EPC 1973 inter alia with regard to the following documents:

(OD1) G.S. Sundaram, "*Counter-C³ Systems From Fairchild Camera*", International Defense Review, vol. 12, No. 3/1979, pages 427-431;

(OD3) R. Pengelley, "*Australia pushes technological bounds*", International Defense Review, vol. 21, No. 1/1988, pages 65-69.

In its decision, dispatched on 15 December 2006, the opposition division held that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the patent and the invention to which it relates met the requirements of the EPC. Hence, the opposition division maintained the patent as amended.

II. On 29 January 2007 the opponent (appellant) lodged a notice of appeal against the decision of the opposition division and a statement setting out the grounds of appeal. The appeal fee was paid on 31 January 2007.

III. With the notice of appeal, the appellant filed a further document:

(OD7)Richard G. Wiley, "*Electronic Intelligence: The Interception of Radar Signals*", Artech House Inc., US, 1985, pages xi and 107-134.

IV. On 20 August 2009 the parties were summoned to oral proceedings scheduled to take place on 20 November 2009. On 2 September 2009 a communication of the Board was sent.

V. In reply to the communication, with a letter of 19 October 2009 the proprietor of the patent (respondent) filed auxiliary requests 1, 2 and 3.

VI. Oral proceedings before the Board were held at the scheduled date.

VII. The appellant requested that the interlocutory decision be set aside and the patent be revoked in its entirety.

The respondent (proprietor of the patent) requested that the appeal be dismissed (main request) or, alternatively, that the patent be maintained on the basis of one of the sets of claims filed with the letter of 19 October 2009 as auxiliary requests 1, 2 and 3. The respondent further requested that document OD7 not be admitted into the procedure.

VIII. The wording of the claim 1 of the patent as maintained reads as follows, wherein the letters [a] to [m] do not form part of the wording and correspond to the

itemization made by the respondent with the letter of 19 October 2009:

- "[a] System of surveillance comprising at least one information centre (110) arranged to control sub-units belonging to the system via information transfer, the system further comprising*
- [b] at least three cells (130-139) for each information centre included in the system, and these cells are arranged to function as sub-units for said information centre;*
- [c] the surveillance is of determined phenomena that emit electromagnetic signals with a geographically limited and time-varying geographical distribution; the system is in a geographical area in which these phenomena can be detected with the aid of the signals which the phenomena emit;*
- [d] the system detects the signals which the phenomena emit with the aid of sensors (270, 271) in the cells;*
- [e] at least certain of the cells can from distinctive features of the detected signals determine whether to activate at least one output signal (260, 261) in dependence upon decision criteria stored in the cells and without cooperation of the information centre;*
- [f] where at least two cells (310, 320) are arranged for determination of a bearing to the phenomenon,*

each cell comprising at least one receiver and one antenna;

[g] wherein the information centre (110) is adapted for combining and evaluating the indications from a number of cells in order to obtain a location of the phenomenon;

characterized in that

[h] wherein at least certain of the cells are arranged so that they can be activated and deactivated via the information transfer from the information centre;

[i] wherein at least one cell can be loaded with new parameters from the information centre, where said parameters define the phenomenon and constitute a decision basis for the at least one cell;

[j] wherein the cells are adapted to operate in a mode wherein power is supplied only for one-way communication, and in which the cell does not emit radiation or other activity which can reveal its existence;

[k] wherein the cells are adapted to function in an active mode in response to a command from the information centre, and wherein the cells in said active mode are adapted to report to the information centre according to a standardized protocol upon the detection of a phenomenon in accordance with the given criteria;

[l] wherein the cells are provided with receivers by means of which an internal precision clock in the cell is synchronized with an external time reference;

[m] and wherein the determination of the bearing to said phenomenon takes place by time of arrival measurement for one and the same pulse by comparing signals from two cells, each of said two cells having its own antenna and receiver, said cells being positioned at a distance from one another."

The wording of the claim 1 of auxiliary request 1 differs from that of claim 1 of the main request in that the following features are added between features [h] and [i]:

"wherein the information centre is for the information transfer adapted to communicate via wire to a public telephone network, and wherein the cells are for said information transfer adapted to communicate in a wireless manner with a GSM radio network;

wherein the cells have an address code which is unique for each cell;

wherein the address code of the cell is used in all communications between the information centre and the cell as a call address;".

The wording of the claim 1 of auxiliary request 2 differs from that of claim 1 of the main request in

that the following features are added between features [h] and [i]:

"wherein the information centre is for the information transfer adapted to communicate via wire to a public telephone network, and wherein the cells are for said information transfer adapted to communicate in a wireless manner with a GSM radio network;

wherein the system comprises a group of cells, said group having a group address code which is to be found in each cell and which is the same for all cells which belong to the group, wherein criteria according to which a cell is assigned to the group comprise one or more of the function of the cell, the design of the cell, the type of information transfer of the cell or the geographical position of the cell;

and wherein the group address code is used in all communications between the information centre and the group as a call address;".

The wording of the claim 1 of auxiliary request 3 differs from that of claim 1 of the main request in that the following features are added between features [h] and [i]:

"wherein the information centre is for the information transfer adapted to communicate via wire to a public telephone network, and wherein the cells are for said information transfer adapted to communicate in a wireless manner with a GSM radio network;

wherein the cells have an address code which is unique for each cell;

wherein the address code of the cell is used in all communications between the information centre and the cell as a call address;

wherein the system comprises a group of cells, said group having a group address code which is to be found in each cell and which is the same for all cells which belong to the group, wherein criteria according to which a cell is assigned to the group comprise one or more of the function of the cell, the design of the cell, the type of information transfer of the cell or the geographical position of the cell;

and wherein the group address code is used in all communications between the information centre and the group as a call address;".

The remaining claims 2-11 according to all requests are dependent claims.

- IX. In the present decision, reference will be made to "EPC 1973" or "EPC" for EPC 2000 (EPC, 13th edition, July 2007, Citation practice, pages 4-6) depending on the version to be applied according to Article 7(1) of the Revision Act dated 29 November 2000 (Special Edition No. 1 OJ EPO 2007, 196) and the decisions of the Administrative Council dated 28 June 2001 (Special Edition No. 1 OJ EPO 2007, 197) and 7 December 2006 (Special Edition No. 1 OJ EPO 2007, 89).

Reasons for the Decision

1. The appeal is admissible.
2. Document OD7

The respondent filed claim 1 of the patent as maintained during the oral proceedings on 20 November 2006 before the opposition division. This claim is based on a former claim 1 according to an auxiliary request E filed by the respondent with a letter of 20 October 2006 that the EPO forwarded to the appellant with a communication dated 26 October 2006. In particular, the last paragraph of claim 1 of the patent as maintained has a different wording as compared with that of claim 1 of said auxiliary request E. However, in spite of this, the two paragraphs substantially recite the same features concerning the cell time synchronisation with an external time reference and the time-of-arrival (TOA) measurement with different cells positioned at a distance from one another.

The appellant submitted that OD7 was filed "*at the first opportunity [i.e. with the notice of appeal] to file prior art against the part of claim 1 which, according to the Opposition Division, makes the claim patentable*" (notice of appeal, page 3).

On the other hand, in the respondent's view (letter of 15 August 2007), the appellant could have filed OD7 "*already during the oral proceedings in the first instance*". Thus, OD7 was late filed.

The Board notes that the appellant did not receive the respondent's letter of 20 October 2006 in due time before the scheduled oral proceedings. Thus, it was difficult for the appellant to retrieve and to file new evidence against amended claims, if it considered this necessary, before or during the oral proceedings. Moreover, the appellant could not take note of the fact that the opposition division regarded the last paragraph of claim 1 of the patent as maintained to be decisive for inventive step until it received the decision under appeal (page 8, first two paragraphs).

For these reasons, document OD7 is not considered to be late filed. The respondent's request not to admit OD7 into the procedure is therefore refused.

3. Claim 1 of the main request

3.1 OD1 (pages 430 and 431, "FAIRS") discloses a Fairchild-Automatic-Intercept-and-Response-System (FAIRS) which comprises a central command station controlling fixed or mobile transportable remote sites. The system is intended for carrying out signal surveillance, monitoring, direction finding and accurate location of hostile transmitters.

It was not disputed that OD1 represents the closest state of the art showing a system of surveillance according to the precharacterising part of claim 1.

3.2 The appellant considered claim 1 as including a mere aggregation of features independent from each other. In particular, the group of features concerning activation/deactivation and operation mode of the cells

([h], [j] and [k]) could be regarded separately from that pertaining to TOA measurement ([l] and [m]).

This view is convincing. A combination invention would imply a functional relationship between features or groups of features resulting in a combinative effect beyond the sum of the individual effects. Such a combinative effect cannot be identified in the present case at least with regard to the groups of features referred to above. In particular, claimed characteristics of a cell concerning activation, deactivation, communication with the information centre and loading of parameters, on the one hand, and features for determining the bearing of a phenomenon on the basis of a time-of-arrival measurement, on the other hand, are functionally not so linked together that a synergistic effect results from their combination. Thus, when assessing inventive step, each group of features may be considered per se. The respondent objected that this approach resulted in a mosaic combination of different features out of their context. This objection, however, is not conclusive in view of the foregoing.

3.3 In the appellant's view, feature [i] of claim 1 was known from OD1, features [h] and [j] from OD3, features [l] and [m] from OD7, whereas feature [k] represented a trivial measure. The appellant thus concluded that the claimed system was new over OD1 but did not involve an inventive step in view of OD1, OD3 and OD7. The respondent contested this argumentation.

3.4 With regard to feature [i] of claim 1, OD1 (page 431, right-hand column, lines 9-27) discloses that a threat

signal detected at a remote site is passed to a signal recognizer that, in conjunction with a site computer, compares the intercepted signal signature with data stored in a threat library to establish a match and hence a signal recognition. Software flexibility makes it possible to modify the threat library quickly and without any problem.

The respondent submitted that OD1 was silent about feature [i]. In its view (minutes of the oral proceedings of 20 November 2006 before the opposition division, page 4, last full paragraph), the modification of the threat library referred to above was made by programming at the remote site rather than via communication from the command centre.

This view, however, did not convince the opposition division (minutes, sentence bridging pages 4 and 5). The Board too does not find it conclusive. Indeed, OD1 does not mention at all the possibility of programming at the remote side. Rather, the fact that the threat library can be quickly and easily modified expressly hints at a download from the command centre, which would avoid a cumbersome programming at the remote site. Therefore, OD1 is considered to disclose not only the precharacterising part but also feature [i] of claim 1.

- 3.5 With regard to feature [h] of claim 1, OD3 (page 66, left-hand column, second full paragraph to right-hand column, last line) discloses a system for surveillance comprising remote-independently-operable-transceivers (RIOT) associated with local-programming-units (LPU). A RIOT is programmed in the field with the aid of a LPU, which is normally distributed on the basis of one for

every four transceivers. The LPU downloads software and operational parameters and can also serve as readout for any data stored within the transceivers. A RIOT acts as a counter to fixed-frequency battlefield radio nets, intercepts and stores any transmission of 140 ms or longer, and sends out a variety of signal types as a deception emitter.

Moreover, according to page 67 (left-hand column, lines 20-25), a RIOT can be attached to a helicopter or a remotely-piloted-vehicle (RPV). A remote control unit connected to a standard man-pack radio is intended for switching the RIOT on or off while it is unattended, to alter programmed timings or transmission parameters, or to play back stored electronic surveillance data.

The appellant agreed with the opposition division's view (summons of 5 July 2006, page 6, last two paragraphs, page 7, first paragraph) that the remote control unit corresponded to the LPU, at least as far as the programming function was concerned. It also corresponded to the information centre according to claim 1, which should be understood in a broad way, whereby the feature of switching on and off a RIOT did not differ from the activation and deactivation of a cell by the information centre.

The Board sees no reason to depart from this view.

The respondent submitted (letter of 19 October 2009, page 4, fifth paragraph) that a skilled person would not take OD3 at all into account. But, even if one would, OD3 only taught that the remote control activated or deactivated a RIOT. This assumedly took

place in relative close proximity to the RIOT as no special means was discussed for network extended remote control operation.

These submissions, however, are not conclusive. OD3 also concerns a system of surveillance, so that it is relevant. Moreover, "remote" control is carried out according to the disclosure on page 67. Therefore, OD3 discloses feature [h] of claim 1.

In the Board's view, OD3 also discloses feature [j] of claim 1. It is implicit that a switched off RIOT, i.e. a deactivated cell according to claim 1, does not emit any radiation but can still communicate with the remote control, i.e. the information centre according to claim 1, if only for the reason to be reactivated. Indeed, should such a communication fail, the RIOT would become useless, as the appellant convincingly submitted at the oral proceedings before the Board.

- 3.6 With regard to feature [k] of claim 1, OD1 (page 431, right-hand column, lines 9-34) discloses that the receivers at each remote site are commanded from the command centre to scan particular portions of the RF spectrum wherein a threat transmitter is thought likely to operate. As soon as a threat signal is detected, signal recognition is carried out, an alarm is registered, a bearing is taken and the alarm is transmitted to the command centre. Thus, the receiver at a remote site operates in an active mode in response to a command from the command centre and reports to the command centre upon detection of a threat signal in accordance with given criteria.

In the light of this disclosure, the Board finds convincing the appellant's submission that a standardized protocol is necessary for the communication between remote receiver and command centre. Thus, the feature concerning the standardized protocol is either implicit to the disclosure of OD1 or trivial for a skilled person.

- 3.7 Features [l] and [m] of claim 1 concern a TOA measurement on the basis of two cells with synchronised internal time.

In its interlocutory decision (Reasons, point 3), the opposition division considered that documents OD1 and OD3 did not render obvious the use of two different cells for a TOA measurement. In its view, although TOA measurements were known in the art at the priority date of the present patent, a skilled person got no incentive from the prior art to apply this technique to the system of OD1. Even if the skilled person tended to introduce this technique, he/she would not consider the claimed solution of providing the bearing of a phenomenon by comparison of signals of two distant cells. On the contrary, the more straightforward way would be to introduce the TOA technique in the setup shown in OD1 (page 431, figure on the top side), i.e. to rely on a measurement based on two antennas of the same cell, which could be placed far enough to give sufficiently accurate results. Indeed, the use of antennas of two different cells had the drawback that an accurate time determination in both cells was needed. Such a feature, however, was not disclosed, either explicitly or implicitly, in OD1. Rather, the arrangement of OD1 was based on a single cell and had

the advantage that the accurate time determination was not necessary.

The Board would agree with this argumentation on the basis of the disclosure of OD1 only. The opposition division, however, had no knowledge of textbook OD7 filed with the notice of appeal.

OD7 (page *xi*, Preface) is concerned with the interception of radar signals, in particular with the issue of how to use various receivers in interception applications. Other major topics concern direction finding and location. Chapter 5, which deals in extenso with the issue of emitter location techniques, presents two major approaches. Emitter location estimation using multiple angle-of-arrival (AOA) measurements is the classic approach, the basic idea of which changed little since the 1940s. The time-difference-of-arrival (TDOA) technique is more complex, and its use is more recent and much less widespread. According to the leading-edge (LE) TDOA technique, the arrival time of the leading edge of a radar pulse is determined at a receiver. The difference between the arrival times of the same pulse at two widely separated ground-based sites gives the TDOA with respect to the baseline between the two receivers. This TDOA measurement establishes an iso-delay line on the surface of the earth that passes through the emitter location. A similar TDOA measurement with respect to another baseline establishes another iso-delay line. The intersection of these iso-delay lines determines the location of the emitter (Figure 5-8).

The respondent contested that document OD7 reflected common general knowledge (letter of 15 August 2007, point 1). Moreover, in its view, the outcome of the present case would not be changed by the consideration of OD7 (letter of 19 October 2009, page 3, points i) and ii)).

Thus, two issues need to be considered. First, whether OD7 reflects common general knowledge. Second, whether a skilled person would consider introducing the leading-edge TDOA technique according to OD7 into the system of surveillance known from OD1.

With regard to the first issue, the jurisprudence of the boards of appeal has defined the common general knowledge of a skilled person working in a particular technical field as being normally represented by the content of encyclopaedias, textbooks and dictionaries on the subject in question (T 0890/02 (OJ 2005, 497), Reasons, point 2). Three aspects have been identified for assessing the common general knowledge of the skilled person (ibid, Reasons, point 3). Firstly, the skills of such a person include not only basic general knowledge of a particular field of technology, but also the ability to look up such knowledge in encyclopaedias, textbooks and dictionaries. Secondly, it cannot be expected that, in order to identify this common general knowledge, the skilled person will carry out a comprehensive search of the literature covering virtually the whole state of the art. No undue effort in such a search can be required from the person skilled in the art. Thirdly, the information found must be unambiguous and usable in a direct and

straightforward manner without doubts or further research work.

In the present case, the Board does not have any reason for diverging from this jurisprudence that would lead to the conclusion that textbook OD7 represents common general knowledge. In particular, it may be expected that the skilled person, designing systems of surveillance such as the one known by OD1, would be aware of a textbook like OD7 dealing inter alia with radar emitter location by a TDOA technique that represents an embodiment of the present invention covered by the claimed subject-matter. Thus, contrary to the respondent's view, the Board considers that OD7 represents background knowledge.

With regard to the second issue mentioned above, the appellant submitted in the grounds of appeal (pages 4 and 5) that OD1 described an operational system. At the publication date (1979) of this document and a fortiori at the time the described system was designed, computers with a computational power sufficient for making TDOA measurements on the basis of two cells with synchronised internal time were not yet available. For this reason, the system of OD1 relied on AOA measurements. At the priority date of the present patent (1995), however, a skilled person, knowing from OD7 that the TDOA technique could be used in systems like the one known from OD1, would immediately consider that such a technique represented an obvious alternative to the AOA measurements on which the system of OD1 relied. OD7 itself prided support for this conclusion. Indeed, AOA and TOA/TDOA measurements were

disclosed as two viable alternatives (page 107) that might even be combined (page 132).

The respondent did not dispute that the TDOA technique per se was known. What was relevant, however, was its application in a system of surveillance as claimed. No document on file suggested such an application. On the contrary, the complexity of the TDOA technique, which was acknowledged in OD7, played an essential role against its application and should be duly considered when contemplating the combination of OD1 and OD7.

The appellant's submissions are substantially based on the approach that the skilled person was led by the technical progress to consider alternatives to the AOA technique disclosed by OD1. This view is not invalidated by the respondent's argument concerning the complexity of the TDAO technique. Indeed, this drawback would be compensated by the ongoing computer progress, on the one hand, and by the improvement in location accuracy that may be achieved (page 115, lines 7-10), on the other hand. The former aspect is clearly at the basis of the development of the more recent TDOA approach (page 107, point 5.1), which may regarded as an alternative to the classic AOA approach, as the appellant convincingly submitted. It should also be taken into consideration that OD7 (page 132, point 5.6) points out that, in an operational emitter location system, the AOA approach will be needed along with the TDOA approach. In a dense environment of emitters, it will be difficult to determine which pulse is coming from which emitter at separated receiver platforms. By using the AOA approach, only those pulses having appropriate bearings need be considered in the TDOA

processing. In the Board's view, this disclosure gives the skilled person a hint at integrating the TDOA processing in the system of OD1 rather than replacing the disclosed AOA technique.

Therefore, OD7 represents common general knowledge of the skilled person, discloses features [l] and [m] of claim 1, and incites the skilled person to complement the system of surveillance of OD1 with these features.

- 3.8 In conclusion, keeping in mind the aggregation character of the features of claim 1 of the maintained patent, as mentioned above, the subject-matter of claim 1 at issue lacks inventive step (Article 56 EPC 1973) in view of documents OD1, OD3 and OD7.

4. Auxiliary requests 1, 2 and 3

- 4.1 The respondent filed auxiliary requests 1, 2 and 3 with the letter of 19 October 2009, without making any comments on the performed amendments, their support in the application as filed (Article 123(2) EPC) and their effect for the assessment of inventive step.

The appellant objected to their admission. It submitted that the new features added in claim 1 of auxiliary requests 1, 2 and 3 were also recited in claim 1 of auxiliary requests A, C and F, respectively, filed with the letter of 20 October 2006. Moreover, the opposition division had held that auxiliary requests A and C were not allowable (minutes of 15 December 2006 of the oral proceedings of 20 November 2006, point 6, last paragraph, point 9, last paragraph).

The respondent held that the interlocutory decision of the opposition division did not deal at all with auxiliary requests A, C and F then on file. Admission of a request in the second instance should not be refused on the ground that it had already been considered at the level of an opinion.

- 4.2 Pursuant to Article 13(1) RPBA, any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.

According to the jurisprudence of the boards of appeal, a party, when filing a new request during the procedure of second instance, should be expected to make a fair attempt to meet the objections raised against the requests on file, if these were not considered to be allowable. Thus, if a new request gives cause for further objections, independently on whether or not the former objections are met, a board, in the exercise of the discretionary power conferred by Article 13(1) RPBA, may refuse its admission.

- 4.3 In the present case, the wording of claim 1 according to each of auxiliary requests 1, 2 and 3 corresponds to that of claim 1 of the patent as maintained with the addition of further features. One of these added features, which is common to all three auxiliary requests, reads as follows:

"wherein the information centre is for the information transfer adapted to communicate via wire to a public telephone network, and wherein the cells are for said information transfer adapted to communicate in a wireless manner with a GSM radio network".

The respondent submitted that support for this amendment was provided by the application as filed (page 7, lines 4-23, page 9, lines 30-36). The appellant held that the amendment was not clearly and unambiguously supported by the original disclosure.

- 4.4 According to the application as filed (page 7, lines 4-23 and Figure 1), the information centre comprises a data processor and input and output devices which have been prepared for external communication 120. This communication 120 can take place either in a wireless manner via antenna 122 or via wire 124 and be of a type for one-way or a type for two-way communication. If the communication with the cells takes place in a wireless manner, this can take place via a radio network, for example GSM (Global System for Mobile communication) or NMT (Nordic Mobile Telephony), or directly to the cells. If, on the other hand, the communication takes place via wire, this can take place via a telephone network, public or private, and then if appropriate via a radio network, for example GSM or NMT, or directly to the cells. Wire means both optical and electrical conductor. In certain applications, it may be suitable to use other networks included in the national defence.

Further, according to the application as filed (page 9, lines 30-36 and Figure 2), the communication arrangement 250 of a cell may be of a type for one-way

or a type for two-way communication. The communication may be either in a wireless manner via antenna 252 to a radio network, for example GSM or NMT, or directly to the information centre, or via wire 254 to a public or private telephone network or directly to the information centre.

4.5 In the added feature of claim 1 of auxiliary requests 1, 2 and 3, as mentioned above in point 4.3, the expression "*information transfer*" refers to the exchange of information between the information centre and the cells (see the first two features of claim 1 of each of the auxiliary requests). The amendment, however, recites that, for this information transfer to take place, the information centre communicates via wire to a public telephone network and the cells communicate in a wireless manner with a GSM radio network. The amendment does not specify if and how the public telephone network communicates with the cells, and if and how the GSM radio network communicates with the information centre.

4.6 A disclosure in these terms lacks clarity and, moreover, cannot be directly and unambiguously derived from the application as filed. Indeed, the citations from the application as filed mentioned above exclusively concern the end-to-end communication between the information centre and the cells, which can take place either via wire or in a wireless manner. In the former case, it takes place via a telephone network, a radio network (GSM or NMT), or directly. In the latter case, via radio network (GSM or NMT), or directly.

Moreover, the amendment generates undisclosed subject-matter in that a system of surveillance is claimed, which has the advantages of a communication via wire, which is safe and free of disturbance, between the information centre and the public telephone network and of a flexible wireless communication between the cells and the GSM radio network. This configuration and its advantages were not originally disclosed.

- 4.7 Therefore, the amendments in claim 1 according to each of auxiliary requests 1, 2 and 3 gives cause to objections under Article 84 EPC 1973 and Article 123(2) EPC. Moreover, it is doubtful, at least prima facie, whether the performed amendments are sufficient for meeting the objection of lack of inventive step which renders unallowable claim 1 of the main request.

Under these circumstances, auxiliary requests 1, 2 and 3 are not admitted into the procedure.

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

R. Schumacher

B. Schachenmann