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**Datasheet for the decision  
of 9 August 2012**

**Case Number:** T 2334/08 - 3.5.05  
**Application Number:** 02806418.6  
**Publication Number:** 1474894  
**IPC:** H04L 12/24, H04L 29/02,  
H04M 3/22, H04Q 3/00  
**Language of the proceedings:** EN

**Title of invention:**

Identification of delivery objects in a telecommunications network

**Patent Proprietor:**

Nextlimit AB

**Opponent:**

PacketFront Sweden AB

**Headword:**

Identification of delivery objects/NEXTLIMIT

**Relevant legal provisions:**

EPC Art. 99(1), 106, 107, 108

EPC R. 22, 85, 100(1)

**Keyword:**

"Appellant lost capacity to be a party to proceedings - appeal terminated"

**Decisions cited:**

T 0353/95

**Catchword:**

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Case Number: T 2334/08 - 3.5.05

**DECISION**  
of the Technical Board of Appeal 3.5.05  
of 9 August 2012

**Appellant:** Nextlimit AB  
(Patent Proprietor) Vivelvägen 19  
S-125 33 Älvsjö (SE)

**Representative:** Karlström, Lennart  
Noréns Patentbyrå AB  
Box 10198  
S-100 55 Stockholm (SE)

**Respondent:** PacketFront Sweden AB  
(Opponent) Isafjordsgatan 35  
S-164 40 Kista (SE)

**Representative:** Stanners, David Ralph  
Rouse Patents  
1 Harbour Exchange  
London E14 9GE (GB)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 3 November 2008  
revoking European patent No. 1474894 pursuant  
to Article 101(2) EPC.

**Composition of the Board:**

**Chair:** A. Ritzka  
**Members:** P. Corcoran  
F. Blumer

## **Summary of Facts and Submissions**

- I. This appeal is against the decision of the opposition division to revoke the European patent no. 1 474 894. The written reasons for the decision were dispatched on 3 November 2008.
- II. The patent proprietor (appellant) filed a notice of appeal which was received at the EPO on 17 December 2008 and the appeal fee was paid on the same date. A written statement setting out the grounds of appeal was received at the EPO on 2 March 2009. In said written statement, the appellant requested that the decision under appeal be set aside and that the patent as granted be maintained.
- III. With a letter dated 15 July 2009, the respondent (opponent) made a request to the effect that the decision under appeal be maintained and that the appeal be dismissed in its entirety.
- IV. The board issued a summons to oral proceedings to be held on 9 August 2012.
- V. With a letter dated 1 June 2012, the representative on record for the patent proprietor (appellant) informed the board to the effect that there was no longer any validated patent in force based on the patent in suit and that the patent proprietor had gone bankrupt and no longer existed. The representative further stated that he would not attend the oral proceedings.
- VI. The board issued a further communication to the parties dated 20 June 2012 in which it referred to the letter

of 1 June 2012 noting that no evidence had been filed in respect of the alleged bankruptcy of the patent proprietor. However, publicly available commercial register information retrieved from the Internet site *www.allabolag.se* appeared to confirm the information provided by the appellant's representative and a copy of this information was annexed to the communication.

It was further noted that as no transfer had been registered under Rule 22 EPC (applicable during opposition proceedings according to Rule 85 EPC), Nextlimit AB or its estate was still considered to be the patent proprietor and appellant in the present appeal proceedings. In the absence of any information or evidence relating to a succession, the board assumed that the appellant had ceased to exist as a commercial entity and was not in a position to act in the proceedings any more. The parties were advised that under the given circumstances, appeal proceedings might be terminated without decision on the merits.

The board informed the parties that the date for oral proceedings was maintained and that, based on the evidence available at the date of the oral proceedings, it would decide whether or not the proceedings were to be terminated without a decision on the merits.

- VII. With a letter dated 6 August 2012, the respondent's representative notified the board that he would not be attending the oral proceedings.
- VIII. The appellant's representative made no further submissions in response to the communication of the board dated 20 June 2012.

IX. Oral proceedings were held as scheduled on 9 August 2012. Neither the appellant nor the respondent were represented. After due deliberation, the chair announced the board's decision.

### **Reasons for the Decision**

1. The appeal as filed on 17 December 2008 fulfilled the requirements of Articles 106 to 108 EPC (cf. Facts and Submissions, item II. above).
2. The submissions made by appellant's representative with the letter of 1 June 2012 (cf. Facts and Submissions, item V. above) indicated that the appellant had ceased to exist as a legal entity.
3. According to decision T 0353/95 (cf. Reasons 2.), only an existing natural or legal person can be a party to opposition proceedings (Article 99(1) EPC; Lunzer/Singer, The European Patent Convention, London 1995, 99.02) and this applies also at the appeal stage since Article 107, first sentence, EPC makes no different provision in this respect (Rule 100(1) EPC).
4. If the appellant still retained the capacity to act in the present appeal proceedings, the onus was on the appellant or its representative to respond to the communication of 20 June 2012 by informing the board accordingly.
5. Likewise, if there had been a transfer in the ownership of the patent in suit, the EPO should have been

informed to this effect (cf. Rule 22 EPC which is applicable during opposition proceedings according to Rule 85 EPC).

6. In the absence of any response from the appellant's representative to its communication of 20 June 2012, the board concludes that the original appellant has lost its capacity to act in proceedings before the EPO. As no transfer has been registered under Rule 22 EPC, the EPO has no record of a valid successor in title who would be entitled to continue the present proceedings.
7. Consequently the appeal has lapsed and the proceedings are at an end.

## **Order**

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

The appeal proceedings are terminated.

The Registrar:

The Chair:

K. Götz

A. Ritzka