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**Datasheet for the interlocutory decision  
of 11 March 2015**

**Case Number:** T 0423/11 - 3.5.06

**Application Number:** 96921304.0

**Publication Number:** 0834121

**IPC:** G06F9/45

**Language of the proceedings:** EN

**Title of invention:**

RECONFIGURABLE ALGORITHMIC NETWORKS FOR AIRCRAFT DATA  
MANAGEMENT

**Patent Proprietor:**

Honeywell International Inc.

**Opponent:**

SAGEM Défense Sécurité

**Headword:**

Aircraft data management/HONEYWELL

**Relevant legal provisions:**

EPC R. 99(1) (a), 101(2), 103(1) (a)

**Keyword:**

Admissibility of appeal - (yes)  
Validity of opponent status - (yes)

**Decisions cited:**

G 0004/88, T 0298/97, T 0960/08, T 0006/05, T 0019/97,  
T 0870/92, T 0478/99, T 0413/02, T 0711/99, T 2357/12,  
T 0956/03, T 1421/05, T 1137/97, T 1032/10

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0423/11 - 3.5.06

**I N T E R L O C U T O R Y   D E C I S I O N**  
**of Technical Board of Appeal 3.5.06**  
**of 11 March 2015**

**Appellant:** SAGEM Défense Sécurité  
(Opponent) 18/20 Quai du Point du Jour  
92100 BOULOGNE-BILLANCOURT (FR)

**Representative:** Regimbeau  
20, rue de Chazelles  
75847 Paris Cedex 17 (FR)

**Respondent:** Honeywell International Inc.  
(Patent Proprietor) 101 Columbia Road  
Morristown, NJ 07960 (US)

**Representative:** WP Thompson  
55 Drury Lane  
London  
WC2B 5SQ (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**17 December 2010 concerning maintenance of the**  
**European Patent No. 0834121 in amended form.**

**Composition of the Board:**

**Chairwoman** M.-B. Tardo-Dino  
**Members:** S. Krischer  
A. Teale

### **Summary of Facts and Submissions**

- I. This is an interlocutory decision on the admissibility of the appeal and the validity of the transfer of opponent status.
- II. A notice of opposition was filed on 7 January 2004 by SAGEM SA represented by G. Bloch against the European patent No. 0834121.
- III. In an interlocutory decision dispatched on 17 December 2010 the opposition division found that the patent as amended in opposition proceedings met the requirements of the EPC.
- IV. A notice of appeal was filed on 17 February 2011 by "the opponent" represented by G. Bloch against this decision. The opponent's name was not indicated.
- V. A statement of grounds of appeal was filed by the appellant-opponent on 26 April 2011. It requested the revocation of the patent in its entirety. In the statement of grounds the opponent was referred to as "SAGEM".
- VI. In a further submission, received on 26 April 2011, the appellant requested the reimbursement of the appeal fee under Rule 103(1)(a) EPC for violation of its right to be heard.
- VII. In its reply to the statement of grounds received on 17 November 2011 the respondent-patent proprietor requested that the appeal be dismissed.

VIII. With a letter dated 22 August 2013 a new professional representative of the appellant informed the board that on 11 May 2005 SAGEM SA had changed its name to SAFRAN and transferred, *inter alia*, its assets of the "navigation and aeronautical systems" division to SAGEM Défense Sécurité. From the 11 May 2005 onwards the opponent was SAGEM Défense Sécurité. It was requested to register this change.

The appellant filed an extract of the minutes of the general assembly of 11 May 2005 where it was decided to change the name of SAGEM SA to SAFRAN, an extract of the commercial register in which this change was recorded, and a "reiterative agreement to the contribution agreement under the spin-off regime" (called "reiterative agreement" for short in the following) dated 13 March 2006 according to which:

"A. Pursuant to a private agreement dated April 1st, 2005, SAGEM and SAGEM Défense Sécurité agreed to an assignment agreement under the spin-off regime (the "Contribution Agreement") concerning the "Defense [sic] and Security Activity" (hereafter referred to as the "Defense and Security Activity") comprised of (i) the "navigation and aeronautical systems" division, (ii) the "optronics and aeroterrestrial systems" division, and (iii) the "security" division. Under this agreement it was agreed that SAGEM contribute[d] to SAGEM Défense Sécurité all of the assets of the Defense [sic] and Security Activity held by SAGEM and notably the trademarks, patents, and other intellectual and property rights attached to the Defense and Security Activity, with the exception of those retained by SAGEM and

listed in 1.1 of Appendix 1.2.4 of the Contribution Agreement for which SAGEM Défense Sécurité will be granted a licence".

B. The SAGEM and SAGEM Défense Sécurité shareholders meeting, respectively held on May 10<sup>th</sup> and May 11<sup>th</sup>, 2005, approved the Contribution Agreement under the French "spin-off regime" and the contribution by SAGEM of its Defense and Security Activity to SAGEM Défense Sécurité.

Following these approvals, the contribution by SAGEM of its Defense and Security Activity to SAGEM Défense Sécurité became definitive as of May 11<sup>th</sup>, 2005."

IX. With a submission dated 21 February 2014 the respondent questioned the admissibility of the appeal on the basis that it had been filed by a person not entitled to appeal. In the event that the board found that the appeal was filed by a person not entitled, as the opponent ceased to exist when it changed its name on 11 May 2005, the appeal was filed by a non-entity. The notice of appeal was filed without the name and address of the opponent, contrary to Rule 99(1)(a) EPC, and no action has been taken to remedy these deficiencies within the period allowed.

The respondent also argued that the opponent status had not been legally transferred. The transfer of opponent status was not recorded before the expiry of the period for appeal.

Oral proceedings were requested with regard to this "preliminary issue", if the board was not minded to dismiss the appeal.

- X. The board sent a first communication dated 28 May 2014 inviting the parties to comment on the questions of the validity of the transfer of opponent status and the admissibility of the appeal.
- XI. The appellant in a submission dated 25 July 2014 defended the validity of the transfer and the admissibility of the appeal.
- XII. The respondent in a submission dated 5 August 2014 reiterated its objections.
- XIII. The board issued a summons to oral proceedings dated 25 September 2014.
- XIV. The oral proceedings, initially scheduled for 9 January 2015, were postponed until 11 March 2015 at the request of the respondent dated 20 October 2014.
- XV. With the letter dated 11 February 2015 the appellant filed further submissions and the following documents: the "contribution agreement" (A1), appendix 1.2.4 of the "contribution agreement" (A2), an copy of the "reiterative agreement" (A3), an affidavit from Laurent Sarragozi, a legal manager at SAGEM SA from 2001 to 2005 and a general counsel at SAGEM Défense Sécurité from 2005 to 2013 (A4), a copy of the ID card of Laurent Sarragozi (A4bis) and an invoice from "Bloch et Bonnetat" (A5).
- XVI. In a submission dated 26 February 2015 the respondent, *inter alia*, questioned the admissibility of the documents as late filed.

XVII. Oral proceedings restricted to the issues of the admissibility of the appeal and the validity of the transfer of opponent status were held on 11 March 2015. The requests were (i) for the appellant that the appeal be declared admissible and the transfer of opponent status be declared valid, (ii) for the respondent that the documents filed with the letter dated 11 February 2015 not be admitted into the proceedings, further that the appeal be declared inadmissible and the opponent status be declared not legally transferred. At the end of the oral proceedings the board announced its interlocutory decision.

XVIII. The arguments of the respondent-proprietor in its written submissions and expanded during the oral proceedings may be summarised as follows:

- a) The transfer of a pending opposition is not free and an opposition may only be transferred or assigned as part of the opponent's business assets which must include the assets in the interest of which the opposition was filed (G 4/88). Although the relevant business assets "navigation and aeronautical systems" were purportedly transferred by the "reiterative agreement" dated 13 March 2006, the list of transferred patents in appendix 1 of the "reiterative agreement" contains only one European patent and mentions exceptions with respect to the assets which were contributed by SAGEM SA to SAGEM Défense Sécurité and for these exceptions only a licence was granted (see the letter of the respondent dated 5 October 2014, section 4.).



- b) The notice of appeal was incomplete and the patent proprietor was kept in ignorance as to the true identity of the opponent until the opponent's request for a transfer filed on 2 September 2013.
- c) Therefore either the appeal was filed by an entity which no longer existed (now SAFRAN) or the appeal was not completed by the true opponent in due time to comply with the requirements of Rule 99(1)(a) EPC. The transfer was not recorded in due time.
- d) The transfer of opponent status does not comply with the requirements set out in G 4/88, since not all assets were assigned. There seems to be discrepancies between the date when the transfer became effective (date when the shareholders approved, i.e. 11 May 2005) and the constitution of SAGEM Défense Sécurité on 20 June 2005.
- e) The time delay of more than eight years between the transfer and the request filed with the EPO reveals that the opponent wanted to obscure its identity. This behaviour is contrary to the principle of good faith and constitutes an abuse of procedure.
- f) If the board finds that the transfer of the pending opposition is valid, then the representative G. Bloch appointed by SAGEM SA was no longer authorised to act on behalf of SAGEM Défense Sécurité after the date of the transfer which could have occurred at any time from 1 April 2005 to 20 June 2005. All his acts after the transfer which include the filing of the appeal are deemed not to have been taken.

- g) If the board were to decide that the appeal is admissible, the respondent requests that the matter be remitted to the first instance for a review of whether a fundamental deficiency occurred during the first instance proceedings.

XIX. The arguments of the appellant-opponent in its written submissions and expanded during the oral proceedings may be summarised as follows:

As long as the EPO was not informed of the transfer of opponent status to SAGEM Défense Sécurité, the opponent status remained with SAGEM SA, which did not cease to exist; it was just renamed SAFRAN. The appeal was validly filed by the opponent SAGEM SA/SAFRAN, since the transfer has no retroactive effect. The transfer only took effect when it was requested to be recorded by the EPO, namely on 2 September 2013. There had been no invitation by the board to correct the missing details in the notice of appeal, which, according to Rule 101(2) EPC, may be remedied within a time limit set by the board.

## **Reasons for the Decision**

### *1. Admissibility of documents A1 to A5*

Documents A4, A4bis (affidavit and ID card from Laurent Sarragozi), A1 (the "contribution agreement"), A2 (appendix 1.2.4 of the "contribution agreement") and A5 (invoice from "Bloch et Bonnetat") were newly filed. The "reiterative agreement" (A3) had already been filed

with the letter of 22 August 2013. As seen *infra*, the decision is not based on the new documents; the invoice (A5) was referred to by the respondent itself in support of its own arguments. Therefore the admissibility of these documents is a moot issue.

2. *Admissibility of the appeal, Rules 99(1)(a) and 101(2) EPC*

The notice of appeal was filed by the "opponent" without further specification.

The statement of grounds mentioned "SAGEM" as the opponent. As a matter of fact, both the respondent-proprietor, which did not raise any objection in its submissions in reply to the statement of grounds, and the board, which did not send then a communication under Rules 99(1)(a) and 101(2) EPC inviting the appellant to complete its address, had no doubt that the appellant was the opponent SAGEM SA.

Firstly, contrary to the respondent's analysis, the consequence of the absence of an invitation by the board to complete the notice of appeal cannot result in a loss of rights for the appellant. Moreover the time limit for remedying the deficiencies never started to run. Therefore the details missing from the notice of appeal cannot result in the inadmissibility of the appeal because the identity of the appellant was known. It was understood that it was SAGEM SA, and this was confirmed during the appeal proceedings.

Secondly, SAGEM SA (SAFRAN) was the initial opponent and party to the opposition proceedings. Accordingly it was entitled to appeal against the decision in accordance with Article 107 EPC, first sentence (see

T 298/97 of 28 May 2001, points 1 and 2 of the reasons). The simple change of name to SAFRAN had no effect regarding the identity of the opponent which still existed. Furthermore the circumstances cannot be compared to those in case T 298/97 referred to above by the respondent, because in that particular case the statement of grounds had been filed by a different entity than the one which filed the notice and which had not been a party to the opposition proceedings.

3. *The transfer of opponent status and its validity*

3.1 Contrary to the respondent's argument, it results sufficiently from the "reiterative agreement" that the assets transferred to SAGEM Défense Sécurité are those in whose interest the opposition was filed. The opposed patent, entitled "Reconfigurable Algorithmic Networks for Aircraft Data Management", relates to the field of aircraft flight data systems. This means that the field of the opposed patent falls within the assets transferred, namely in the "navigation and aeronautical systems" division.

The objection that not all the corresponding assets were transferred because there were exceptions made for some patents has no bearing. Indeed, some patents were not transferred and only a licence was given. However a licence invests the licensee with the necessary rights to undertake any action to defend the patent under licence. Therefore these exceptions do not deprive the transferee of its general rights given by the transfer of the other assets.

3.2 There is a clear distinction between a substantive transfer of opponent status with the business assets and its procedural validity in proceedings before the

EPO (T 960/08 of 1 December 2011, point 2.2 of the reasons).

It follows from this procedural principle that the procedural validity of a transfer of opponent status is dependent on the submission of a duly substantiated request and on the production of documents providing evidence of legal succession within the proceedings (see T 960/08 quoted above and decisions T 6/05 and T 19/97).

3.3 A transfer can only be acknowledged from the date on which adequate evidence to prove the transfer was filed, i.e. *ex nunc*. There is no retroactive effect of the submission of evidence. One of the consequences is that, until evidence of the transfer has been provided, the original party to the proceedings continues to have the relevant rights and obligations (see T 870/92 of 8 August 1997, point 3 of the reasons, T 19/97, T 478/99, T 413/02, T 6/05). This is especially justified in cases where opponent status is transferred together with the assignment of business assets because the original party continues to exist and may continue the opposition proceedings (see T 6/05, point 1.6.4 of the reasons).

3.4 The factual situation of the case at hand is not comparable with that in T 711/99 quoted by the respondent where the opposition had been filed by the holding company on behalf of its subsidiary although the opposition concerned the subsidiary's activity. The opposition was valid, because there is no requirement that the opponent have an interest. Therefore it was a choice that the opposition was filed by the holding and not the subsidiary which could have initially filed the opposition itself, unlike a department of a company.

When the holding assigned its subsidiary (the holding was the only shareholder of the subsidiary) it could not legally assign the pending opposition it had filed, because the subsidiary had its own legal existence and could have initially filed the opposition.

Here the opposition was filed by SAGEM SA before the assets in the interest of which the opposition was filed were transferred to SAGEM Défense Sécurité by a decision approved by the shareholders on 10 and 11 May 2005 and reiterated on 13 March 2006.

It is established case law that the change of opponent status only comes into effect *ex nunc* when the record of the transfer is requested by the new opponent (T 2357/12 of 28 November 2011, point 4 of the reasons) and sufficient evidence is provided (T 870/92, already cited, point 3.1 of the reasons). Until that point in time the former opponent remains a party to the proceedings. Acts performed before the request for transfer by the former opponent are valid, provided the former opponent is still in existence and able to act. This has been confirmed in many decisions, such as T 956/03 of 19 July 2006, point 4 of the reasons; T 1421/05 of 18 January 2011, point 3.4 of the reasons; T 1137/97 of 14 October 2002, point 4 of the reasons and T 1032/10 of 17 January 2013, point 1.2.5 of the reasons.

4. *The time delay between the transfer of opponent status and the request to record the transfer*

The board agrees that such a long time delay, more than eight years, between the transfer and the request filed with the EPO is open to criticism. However there is no indication in the file that it was intended to obscure

the true situation. The board cannot see which possible interest the opponent would have had, in this particular case, in hiding the transfer or delaying the request for registration of the transfer.

The fact that the newly-appointed representative informed the board immediately after its appointment tends to prove that there had been a period of confusion after the transfer (which was carried out in two steps) between the original opponent and the transferee. In this respect the invoice (A5), to which the respondent referred to in support of its argument that the representative was aware of the transfer, is not decisive. The representative in this invoice expressly referred to "SAGEM" as opponent and the fact that the letter head on the invoice mentioned "*Sagem Défense Sécurité, Service Propriété Industrielle*" may be interpreted in several ways, *inter alia* this reference could be understood as relating to the accounts department of SAGEM Défense Sécurité. The board cannot even exclude that the change had not been brought to the attention of the representative, as sometimes happens (see, for instance, point VIII of the facts and submissions in T 298/97, cited above). Therefore there is no evidence that the opponent acted with the intention to hide its true identity.

In addition, the respondent did not suffer any harm from the fact that, as it complained, it was kept in the dark as to the true identity of the opponent. As set out above, it is not even certain that the former representative had been informed of the change. Then SAGEM SA/SAFRAN remained responsible for the opposition until the change was requested. Finally it was not argued, and anyway it would not have been plausible, that this situation had an effect on the result of the

opposition. For all these reasons the board sees no abuse of procedure and a remittal to the first instance would serve no purpose.

5. It follows from the above that the appeal is admissible, and the transfer of opponent status is valid. The proceedings will continue with respect to the substantial issues of the appeal.

### **Order**

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

- 1) The appeal is admissible.
- 2) The transfer of opponent status is valid.
- 3) The appeal proceedings will be continued.

The Registrar:

The Chairwoman:



B. Atienza Vivancos

M.-B. Tardo-Dino

Decision electronically authenticated