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**Datasheet for the decision  
of 3 December 2015**

**Case Number:** T 0340/12 - 3.5.03

**Application Number:** 97926327.4

**Publication Number:** 0894373

**IPC:** H04B7/26, H04B7/155

**Language of the proceedings:** EN

**Title of invention:**

Repeater with variable bandwidth

**Patent Proprietor:**

ALLGON AB

**Opponent:**

TEKO TELECOM S.P.A

**Headword:**

Repeater with variable bandwidth/ALLGON

**Relevant legal provisions:**

EPC Art. 56, 123(2), 111(1)

RPBA Art. 13(1)

**Keyword:**

Inventive step - main request and 6th auxiliary request (no)

Added subject-matter - 1st to 5th auxiliary requests (yes)

Admissibility - 7th auxiliary request (no)

Late-filed document D36 admitted (yes)

Remittal (no)

**Decisions cited:**

T 0402/01, T 1600/06

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0340/12 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 3 December 2015**

**Appellant:** TEKO TELECOM S.P.A  
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**Respondent:** ALLGON AB  
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**Representative:** Ehrner & Delmar Patentbyrå AB  
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**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**7 December 2011 concerning maintenance of the**  
**European Patent No. 0894373 in amended form.**

**Composition of the Board:**

**Chairman** F. van der Voort  
**Members:** T. Snell  
O. Loizou

## **Summary of Facts and Submissions**

I. This appeal was lodged by the opponent (henceforth, appellant) against the interlocutory decision of the opposition division which held that European patent No. 0 894 373 as amended during the opposition procedure met the requirements of the EPC.

II. The patent proprietor is respondent in these proceedings.

III. The following documents are relevant to the present decision:

D6: WO 95/31866 A; and  
D36: US 5300838 A.

D6 was identified in the impugned decision as representing the closest prior art. D36 has been cited by the appellant for the first time in these appeal proceedings.

IV. These appeal proceedings are the second appeal proceedings arising out of the opposition procedure. The present patent was originally granted on 8 August 2001. In the notice of opposition, the opponent raised the ground for opposition pursuant to Article 100(a) EPC (novelty and inventive step). The proprietor of the patent filed amended claims. In a first interlocutory decision, the opposition division held that starting out from D6, the subject-matter of amended claim 1 was new and involved an inventive step. This first interlocutory decision of the opposition division was appealed by the opponent. Shortly before the oral proceedings held before the board of appeal in October 2008, the appellant-opponent submitted a new

- prior art document D27. As the board (in a different composition) held this document to be prima facie highly relevant, it remitted the case to the opposition for further prosecution (cf. T 1600/06, issued 10 October 2008).
- V. In the impugned decision which is the subject of the present appeal, the opposition division held that the subject-matter of claim 1 involved an inventive step having regard to the combination of documents D6 and D27.
- VI. In the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety. Inter alia, it was argued that the subject-matter of claim 1 did not involve an inventive step having regard to the combination of documents D6 and D36, D36 being filed for the first time together with the statement of grounds.
- VII. In the letter of reply to the statement of grounds, dated 19 October 2012, the respondent requested that the case be remitted to the opposition division on the grounds that a "fresh case" had arisen. Alternatively, the respondent requested that the patent be maintained in the version which was held allowable by the opposition division in accordance with the impugned decision. The claims were re-filed as the "main request" with the respondent's letter. Alternatively, the respondent requested that the patent be maintained in amended form on the basis of the claims of one of 1st to 6th auxiliary requests, also filed with the opponent's letter dated 19 October 2012.

- VIII. In a letter dated 27 June 2013, the appellant maintained its request for revocation of the patent in its entirety. Inter alia, issues pursuant to Article 123(2) EPC were raised with respect to various of the auxiliary requests.
- IX. In a communication accompanying a summons to attend oral proceedings, the board gave a preliminary opinion that it was minded to admit D36 but did not intend to remit the case to the opposition division. The board gave a preliminary opinion that the subject-matter of claim 1 did not involve an inventive step having regard to the combination of D6 and D36. As regards the auxiliary requests, the board stated that it broadly agreed with objections raised by the appellant pursuant to Article 123(2) EPC in the letter dated 27 June 2013, and had itself clarity objections concerning claim 1 of certain auxiliary requests.
- X. The appellant announced by letter dated 13 October 2015 that it would not attend the oral proceedings and requested that the board "make a decision based on the documents presently on file".
- XI. The respondent responded to the board's communication by filing a 7th auxiliary request. The respondent also requested, inter alia, that document D36 be not admitted to the proceedings.
- XII. Oral proceedings took place on 3 December 2015 in the presence of the respondent.

On the basis of the written submissions, the appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed, i.e. that the patent be maintained in the version as amended and held allowable by the opposition division, the claims of which request having been resubmitted with the letter dated 19 October 2012 as a main request, or that the patent be maintained in amended form on the basis of the set of claims of one of the first to sixth auxiliary requests, all as filed with the letter dated 19 October 2012, or on the basis of the set of claims of the seventh auxiliary request, as filed with the letter dated 28 October 2015

XIII. Claim 1 of the **main request** reads as follows:

"A mobile telephone repeater comprising an uplink (100) for amplifying signals from a mobile telephone to a base station and a downlink (200) for amplifying signals from said base station to said mobile telephone, said two links being provided with a number of parallel amplifier chains (6, 7), each amplifier chain being designed to pass through a specific frequency band, characterized in that

- at least one of said parallel amplifier chains (6) comprises a filter device having a number of band pass filter units (10, 11) coupled in series,
- at least two band pass filter units in said filter device have controllable pass bands which at least partially overlap each other, each of said band pass filter units (10;11) comprising an input down-mixer (20a;20b), a band pass filter (25;26), an output up mixer (21a;21b) and an associated, controllable local oscillator (22;29), the output of which is connected to the two mixers, so that the input down-mixer (20a;20b) is adapted to subtract the output frequency of the local oscillator from the frequency of the input signal thereto and the output up-mixer (21a;21b) is adapted to

add the output frequency of the local oscillator to the frequency of the output signal of said band pass filter (25;26), whereby the frequency band entering each band pass filter (25;26) will be shifted and cut off at one end when changing the output frequency of said local oscillator, and

- the two controllable local oscillators (22,29) are controllable by a common frequency control unit (28),
- whereby the centre frequency of each band pass filter unit is controllable so as to make the bandwidth of the resulting overlap pass band variable whereby the effective bandwidth of the amplifier chain is controllable."

XIV. Claim 1 of the **1st auxiliary request** is identical to claim 1 of the main request except that the text between the words "characterised in that" and "- at least two band pass filter units" of claim 1 of the main request is replaced by:

"- at least one of said parallel amplifier chains (6) comprises a filter device having a number of band pass filter units (10, 11) coupled in series, and a down-mixer (20), a bandpass filter (24a), and an amplifier (A2) being arranged before said band pass filter units (10, 20), said down-mixer being arranged for shifting a radio frequent [sic] input signal to an intermediate frequency IF1,".

XV. Claim 1 of the **2nd auxiliary request** is identical to claim 1 of the main request except that the text between the words "characterised in that" and "- at least two band pass filter units" of claim 1 of the main request is replaced by:



"- at least one of said parallel amplifier chains (6) comprises a filter device having a number of band pass filter units (10, 11) coupled in series, and amplifiers (A5, A8) arranged such that signals from said filter units (10, 20), pass through said amplifiers (A5, A8), respectively,".

- XVI. Claim 1 of the **3rd auxiliary request** is the same as claim 1 of the 2nd auxiliary request except that in the third clause the wording "each of said band pass filter units (10;11) comprising an input down-mixer (20a;20b), a band pass filter (25;26), an output up mixer (21a; 21b) and an associated, controllable local oscillator (22;29)" is replaced by:

"each of said band pass filter units (10;11) comprising an input down-mixer (20a;20b), a first amplifier (A3, A6) a band pass filter (25;26), a second amplifier (A4, A7) an output up-mixer (21a;21b) and an associated, controllable local oscillator (22;29)".

- XVII. Claim 1 of the **4th auxiliary request** is identical to claim 1 of the main request except that the text between the words "characterised in that" and "- at least two band pass filter units" of claim 1 of the main request is replaced by:

"- each one of said parallel amplifier chains (6) being used in an uplink comprises a filter device having a number of band pass filter units (10, 11) coupled in series, amplifiers (A5, A8) arranged such that signals from said filter units (10, 20), pass through said amplifiers (A5, A8), respectively, and a controllable attenuator arranged for controlling an amplifying gain in said at least one amplifier chain;".

XVIII. Claim 1 of the **5th auxiliary request** is identical to claim 1 of the main request except that the text between the words "characterised in that" and "- at least two band pass filter units" of claim 1 of the main request is replaced by:

"- each one of said parallel amplifier chains (6) being used in an uplink comprises a filter device having a number of band pass filter units (10, 11) coupled in series, amplifiers (A5, A8) arranged such that signals from said filter units (10, 20), pass through said amplifiers (A5, A8), respectively, and a controllable attenuator arranged for controlling an amplifying gain in said at least one amplifier chain, a diode detector arranged for measuring an input signal level in said at least one amplifier chain, and a switching device arranged for strongly attenuating said signals in certain situations;".

XIX. Claim 1 of the **6th auxiliary request** is identical to claim 1 of the main request except that in the fifth clause the text "whereby the centre frequency of each band pass filter unit is controllable so as to make the bandwidth of the resulting overlap pass band variable" of claim 1 of the main request is replaced by:

"whereby the centre frequency of each band pass filter unit is variable in opposite directions, possibly out of synchronism, so as to reduce the bandwidth of said overlapping pass band when the difference between the centre frequencies is increased and vice versa,".

XX. Claim 1 of the **7th auxiliary request** is identical to claim 1 of the main request except that the text between the words "characterised in that" and "- at

least two band pass filter units" of claim 1 of the main request is replaced by:

"- at least one of said parallel amplifier chains (6) comprises a filter device having a number of band pass filter units (10, 11) coupled in series, an amplifier (A1), a down-mixer (20), a band pass filter (24a) and an amplifier (A2) being arranged before said band pass filter units (10, 11), said down-mixer being arranged for shifting a radio frequent [sic] input signal to an intermediate frequency IF1, band pass filters (24b, 24c) and amplifiers (A5, A8) arranged such that signals from said filter units (10, 20) pass through said band pass filters (24b, 24c) and amplifiers (A5, A8), respectively, and an up-mixer (21) arranged for shifting the signal back to a radio frequency, followed by a radio frequency filter (27) and an amplifier (A9),",

and in the third clause the text "each of said band pass filter units (10;11) comprising an input down-mixer (20a;20b), a band pass filter (25;26), an output up-mixer (21a;21b) and an associated, controllable local oscillator (22;29)" is replaced by:

"each of said band pass filter units (10;11) comprising an input down-mixer (20a;20b), a first amplifier (A3, A6), a band pass filter (25;26), a second amplifier (A4, A7), an output up-mixer (21a;21b) and an associated, controllable local oscillator (22;29)".

## **Reasons for the Decision**

1. *Technical background, closest prior art and technical problem*

1.1 The patent in suit relates to a mobile telephone repeater. The parties and the board are in agreement that D6 represents the closest prior art as it concerns a mobile telephone repeater having all the features of the preamble of claim 1. In particular, D6, like the claimed repeater, comprises a number of parallel amplifier chains, each amplifier chain being designed to pass through a specific frequency band. Further, each amplifier chain of D6 comprises a fixed bandpass filter (Fig. 1, reference numeral 8).

1.2 In agreement with the parties, the board regards the objective technical problem to be solved, starting out from D6, as to facilitate frequency bandwidth changes in one or more amplifier chains of the repeater of D6 without necessitating hardware replacements. This is also the problem mentioned in the application as filed (cf. the application as published, WO 97/45969 A, page 2, lines 4-6).

## 2. *Admissibility of D36*

2.1 The appellant argued that starting out from D6, the skilled person would be led by the teaching of D36 to the subject-matter of claim 1 without inventive step. As D36 was filed for the first time with the statement of grounds of appeal, i.e. approximately ten years after the end of the nine-month period for filing an opposition, it has to be determined whether D36 is to be admitted to these (second) appeal proceedings.

2.2 The board's initial assessment was that D36 (in combination with D6) was *prima facie* very highly relevant to inventive step, i.e. was highly likely to prejudice the maintenance of the patent. The respondent

requested (belatedly) that the document should be disregarded for two reasons:

(i) It was filed approximately ten years after the end of the opposition period. Admitting a document this late in the proceedings would be unfair to the proprietor.

(ii) It belonged to the separate field of satellite communications, so was prima facie not highly relevant.

2.3 Re (i): The board agrees that filing a document ten years after the end of the opposition period is an extreme case of late-filing. On the other hand, this has to be balanced against the desirability not to grant invalid patents (see the earlier decision in this case, T 1600/06, points 2.2 and 2.3 of the reasons). The board also notes that the appellant initially did not object to the admissibility of D36, but instead requested remittal of the case. However, remittal is a separate matter which will be considered subsequently. The board also notes that the document was filed at the earliest possible opportunity in these appeal proceedings, i.e. with the statement of grounds of appeal. Consequently, the respondent had sufficient time to deal with the technical issues arising from the introduction of this document.

Re (ii): The board found this argument to be unconvincing for reasons to be given below in connection with inventive step.

2.4 Bearing in mind the above considerations, the board held that the prima facie high relevance of D36 should take precedence over the procedural aspect of its late

filing. Accordingly, D36 was admitted to the proceedings.

3. *Remittal*

3.1 As was noted in the earlier decision on this case, T 1600/06, a patent proprietor has no automatic right of remittal after the citation of a new document (cf. for example T 402/01, first decision, paragraphs 8 and 9, not published). However, the patent proprietor's right to be heard in accordance with Article 113(1) EPC may require remittal when the new document alters the legal and factual framework of the case significantly and a "fresh case" results. The respondent indeed argued that a fresh case had arisen. In the board's view, this is however not the case for the following reasons.

3.2 The appellant's case for attacking inventive step, starting out from D6, essentially relies on combining D6, which has fixed bandpass filters, with a document (in this case D36) disclosing the features of a variable filter as defined in claim 1. This line of argumentation was first attempted by combining D6 with D27, which appeared prima facie to disclose such a filter. At the conclusion of the first appeal proceedings, the case was remitted to the opposition division to have this combination examined, for the reason that this new combination did indeed constitute a fresh case (cf. T 1600/06, points 3.1 to 3.4 of the reasons). In the subsequently resumed opposition proceedings, the patent proprietor was able to convince the opposition division that D27 contained an error, in that D27 disclosed low-pass filters rather than bandpass filters as required by claim 1. With the introduction of D36, the appellant now essentially

repeats the same line of argumentation originally made on the basis of D27. Consequently, there is nothing essentially new in the factual framework of the case. The only new aspect concerns the respondent's argument that D36 comes from a different technical field. However, this new argument is of such limited scope that the board deems it not appropriate to remit the case. Instead, the board will itself deal with this new argument (see points 4.4 to 4.8 below).

3.3 The respondent argued at the oral proceedings before the opposition division that it had only presented arguments based on the correct interpretation of D27, i.e. that it disclosed low-pass filters, not bandpass filters. No full discussion had taken place on the erroneous interpretation that D27 disclosed bandpass filters. Therefore, this line of argumentation was now being fully discussed for the first time.

3.4 The board however disagrees that the proprietor only presented arguments based on the "correct" interpretation of D27. In this respect, the board refers to arguments presented in the letter dated 29 July 2010, points 2.3.4 and 2.3.5, which apparently are independent of any particular interpretation of D27, even if this is not explicitly stated (point 2.3.4 in fact concerns an argument now essentially repeated in connection with D36, cf. point 4.6 below). The board also refers to the minutes of the oral proceedings, point 3.10 ("Even if D27 were to disclose a band-pass filter ..."). Indeed, it was logical that the proprietor had to deal with a possible "bandpass" interpretation of D27, since it could not have been known *a priori* whether the opposition division would accept its case that D27 was erroneous with respect to the disclosure of bandpass filters. The board also

notes that in the present proceedings, with respect to the main request, the only new aspect which could not have been brought before the opposition division is the argument that D36 belongs to a different field, which as the board has already indicated, is not an argument that needs to be examined by two instances.

3.5 A further aspect to be considered is the considerable age of the patent, which derives from an application with a date of filing of 28 May 1997. Hence, the patent will lapse in less than two years. The board sees no public interest in remitting the case, which would leave open the question of validity for several more years.

3.6 In view of the above considerations, the board refused the respondent's request for remittal (cf. Article 111(1) EPC).

4. *Main request - claim 1 - inventive step*

4.1 As has been stated above, it is common ground that D6 is the closest prior art. This document is referred to in the application as filed (cf. the application as published, WO 97/45969 A, page 3, lines 7-8). As already stated, the problem is formulated in the application as filed as "to facilitate frequency band changes in the repeater without necessitating hardware replacements" (cf. page 2, lines 4-6). The background to the formulation of the problem is set out in the application on page 1, line 11 to page 2, line 2. As the problem arises from a situation experienced in practice, the deriving of the problem itself does not contribute to inventive step.



- 4.2 In the board's view, the skilled person faced with this problem would appreciate that facilitating frequency band changes must involve adapting the frequency response of the relevant filters in the repeater (cf. page 1 of the application, lines 31-33). In D6, Fig. 1, the only filter shown is the bandpass filter 8. The skilled person would therefore seek a solution aimed at varying the passband of this filter without changing the filter hardware itself.
- 4.3 D36 discloses a bandpass filter arrangement variable in centre frequency and bandwidth (cf. the abstract, col. 6, lines 1 to 8, and Figs. 4 and 5). This filter arrangement has two bandpass filters connected in series with controllable passbands which at least partly overlap with each other. This arrangement thus essentially operates on the same principle as that of the repeater claimed in claim 1.
- 4.4 The respondent's sole argument at the oral proceedings was that the skilled person would not take D36 into consideration because it was directed to satellite communications. In this respect, the respondent referred to the following passage in the introductory part of D36 (cf. col. 1, lines 20-24): "For some purposes, as for example for spectrum analysis, or for system reconfiguration in communication satellites, it may be desirable to have filters in which the cutoff frequency of frequencies are adjustable, and also in which the bandwidth or bandpass is adjustable".
- 4.5 However, in the board's view, this reference only illustrates possible examples, and would not be seen by the skilled person as limiting the field of application. On the contrary, the skilled person would understand D36 as a general disclosure, equally

applicable to satellite or terrestrial communications. In this respect, the board notes that the title ("Agile bandpass filter"), the abstract, and the opening sentence of the description are formulated in general terms (cf. col. 1, lines 5-9: "This invention relates to electronic filters of the bandpass type, and more particularly to bandpass filters in which the center frequency and bandpass are controllable"). Furthermore, the claims of D36 are not limited to satellite communications or any other field.

4.6 The appellant further argued in the letter of reply to the statement of grounds that D6 is directed to the repeater problems of raising power level and shifting frequencies, so that, as D36 did not offer solutions to these matters, it would not be taken into consideration.

4.7 However, the board notes that in the problem-solution approach, the problem to be solved is determined starting out from the document representing the closest prior art (i.e. D6), taking account of the technical effects achieved by the distinguishing features. This does not mean that the problem has to be explicitly mentioned in D6. The respondent moreover agreed with the formulation of the problem starting out from D6 (cf. the letter of reply to the statement of grounds, point 3.1), and at no time argued that the formulation of the problem involved an inventive step. Neither is it necessary that D36 be directly relevant to other general problems mentioned in D6, as long as the teaching of D36 does not run clearly counter to dealing with these problems, which is apparently not the case here.

4.8 The board therefore considers that the skilled person would take D36 into consideration in order to solve the technical problem posed of facilitating frequency band changes without necessitating hardware changes.

4.9 Further, the board considers that the skilled person would be motivated by the teaching of D36 to solve this problem by replacing the fixed bandpass filters of D6 by variable bandpass filters as disclosed in D36. In so doing, without needing to exercise inventive skill, he would arrive at the subject-matter of claim 1, with the minor difference that claim 1 requires that there are "two controllable local oscillators controllable by a common frequency control unit", whereas D36 discloses two controllable frequency sources controllable by a common frequency control unit, whereby the frequency sources are derived from a single local oscillator (cf. D36, Fig. 8). The board however considers that this difference makes no contribution to inventive step, since two frequency sources derived from a single oscillator is an obvious equivalent to two controllable oscillators. In any case, the respondent did not place any significance on this difference with respect to inventive step.

4.10 Consequently, the board concludes that the subject-matter of claim 1 of the main request does not involve an inventive step (Articles 52(1) and 56 EPC).

5. *1st to 5th auxiliary requests - claim 1 - Article 123(2) EPC*

5.1 Claim 1 of each of these requests has been amended, with respect to claim 1 of the main request, by including some, but not all, of features taken from the detailed embodiment of Fig. 2. In addition, claim 1 of

the 4th and 5th auxiliary requests include features taken from a co-pending application mentioned in paragraph [0015] of the patent. The question of whether features taken from the co-pending application may be included without infringing Article 123(2) EPC can be left aside, because already the inclusion of only some of the features taken from Fig. 2 infringes Article 123(2) EPC by dint of being an unallowable intermediate generalisation. The board draws attention to paragraph [0015] of the description, which states: "figure 2 only contains those components which are essential to the present invention" (cf. the application as published, page 4, lines 8 and 9). As all the features shown in figure 2 are essential to this embodiment, there is no direct and unambiguous basis for amendments based on including arbitrarily some of these features and omitting others.

5.2 The respondent at the oral proceedings had no comments to make in response to this objection, which had essentially been raised by the appellant in the letter dated 27 June 2013 (cf. section III.1(a) and (d) of the letter).

5.3 The board concludes that claim 1 of each of the 1st to 5th auxiliary requests does not comply with Article 123(2) EPC.

6. *6th auxiliary request - claim 1 - Article 123(2) EPC*

6.1 The last part of claim 1 of the 6th auxiliary request reads as follows, the amended text with respect to claim 1 of the main request being underlined:

"- whereby the centre frequency of each bandpass filter unit is variable in opposite directions, possibly out

of synchronism, so as to reduce the bandwidth of said overlapping pass band when the difference between the centre frequencies is increased and vice versa, whereby the effective bandwidth of the amplifier chain is controllable".

6.2 This amendment is based on paragraph [0022] of the description (cf. the application as published, page 6, second paragraph), which, although using slightly different wording, is considered to convey the same meaning.

6.3 The board therefore concludes that claim 1 of the 6th auxiliary request complies with Article 123(2) EPC.

7. *6th auxiliary request - claim 1 - inventive step*

7.1 The board firstly notes that the feature "possibly out of synchronism" is merely optional and therefore to be disregarded in respect of inventive step. The respondent did not contest this point.

7.2 The respondent argued that D36 discloses (cf. col. 4, in particular in lines 24-28 and 44-50) that the two frequency sources 454 and 458 follow each other, 458 being at a fixed offset from 454. Therefore, D36 did not disclose that the frequencies of these sources were variable in opposite directions.

7.3 However, the board disagrees. The embodiment described in D36, cols. 4 and 5 and Figs. 5a to 5e operates on the principle that the band  $f_1$  to  $f_2$  (centre frequency  $f_c$ ), which is dependent on the frequency  $f_{LO}$ , remains static, and the lower band  $f_3$  to  $f_4$  is gradually raised to control the overlap. However, this is merely for illustration. As stated in col. 6, lines 1-8, "... the

center frequency  $f_c$  as illustrated in FIGS. 5a, 5b, 5d and 5e can be moved in frequency in response to the frequency of source 454 [i.e.  $f_{L0}$ ], and the effective bandpass of the combined filter can be moved in response to the frequency of source 458. Thus, essentially complete control of the center frequency and bandpass of the filter is possible in response to control signals." (board's underlining).

Complete control in this sense can inherently only be given by the centre frequency of each bandpass filter being variable in either direction, including opposite directions.

- 7.4 The board concludes that the additional features of claim 1 of the 6th auxiliary request are disclosed in D36.
- 7.5 Consequently, in view of the reasons given above and those given at point 4 in respect of the subject-matter of claim 1 of the main request, the subject-matter of claim 1 of the 6th auxiliary request does not involve an inventive step either (Articles 52(1) and 56 EPC).
8. *7th auxiliary request - admissibility*
- 8.1 The 7th auxiliary request was filed in response to the board's communication. The admitting of this request is therefore at the discretion of the board (Article 13(1) RPBA).
- 8.2 The respondent argued that the late-filing of the request was occasioned by the board's comments in its communication, being an attempt to present a claim which was not an intermediate generalisation. The

respondent also referred to the patent proprietor being, or having been, in receivership.

8.3 The board notes that the new features of claim 1 "band pass filters (24b, 24c) and amplifiers (A5, A8) arranged such that signals from said filter units (10, 20) pass through said band pass filters (24b, 24c) and amplifiers (A5, A8), respectively" are indefinite both with respect to the number of band pass filters and amplifiers and to their arrangement with respect to each other and other components. This was not the case in the application as filed, cf. Fig. 2 and the associated passage of the description. Consequently, claim 1 of the 7th auxiliary request, prima facie, does not comply with Article 123(2) EPC.

8.4 As the board held claim 1 of the 7th auxiliary request to be prima facie not allowable, it exercised its discretion under Article 13(1) RPBA by not admitting the request.

9. *Conclusion*

As there is no allowable request, it follows that the patent must be revoked.

**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:



G. Rauh

F. van der Voort

Decision electronically authenticated