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**Datasheet for the decision  
of 11 November 2015**

**Case Number:** T 2136/14 - 3.5.03

**Application Number:** 96202496.4

**Publication Number:** 0763960

**IPC:** H04Q11/04, H04M11/00

**Language of the proceedings:** EN

**Title of invention:**

Communication system for interactive services with a packet  
switch interaction channel

**Patent Proprietor:**

Koninklijke KPN N.V.

**Opponents:**

Dominik Buchetmann  
NOKIA GmbH  
Nokia Oyj

**Headword:**

Communication system/KPN

**Relevant legal provisions:**

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

**Keyword:**

Amendments -

added subject matter (third, fourth and sixth auxiliary requests) (yes)

Late-filed auxiliary request (fifth) - admitted (no)

**Decisions cited:**

T 0008/11



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Case Number: T 2136/14 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 11 November 2015**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
8 August 2014 concerning maintenance of the  
European Patent No. 0763960 in amended form.**

**Composition of the Board:**

<b>Chairman</b>	F. van der Voort
<b>Members:</b>	A. Madenach
	O. Loizou

## Summary of Facts and Submissions

I. The present appeal arises from the decision of the opposition division posted on 8 August 2014 concerning the maintenance of European patent No. 0 763 960 in amended form. This is the second appeal. In the first appeal, case number T 8/11, the present board, in a different composition, concluded *inter alia* that the subject-matter of claim 1 of a third auxiliary request did not extend beyond the content of the application as filed (Articles 100(c) and 123(2) EPC) and complied with the requirement of Article 123(3) EPC (see reasons 3.4 and 3.6). The case was remitted to the department of first instance for further prosecution on the basis of this third auxiliary request.

II. In the decision under appeal, the opposition division came to the conclusion that the grounds for opposition under Article 100(a) and (b) EPC did not prejudice the maintenance of the patent in amended form on the basis of the third auxiliary request, and more specifically it held that the subject-matter of claim 1 was new and involved an inventive step (Articles 54 and 56 EPC) having regard to the disclosure of:

E22: WO 93/05593 A1,

which was considered to represent the closest prior art.

III. Notice of appeal was filed against this decision by opponents/intervenors 3 and 5 (appellants). The appellants requested that the decision be set aside and that the patent be revoked in its entirety. As an auxiliary measure, oral proceedings were requested.

- IV. The respondent (patent proprietor) requested that the appeal be dismissed, i.e. that the patent be maintained on the basis of the claims of the third auxiliary request. Oral proceedings were requested as an auxiliary measure. As a further auxiliary measure, the respondent requested that the patent be maintained in amended form on the basis of claims of one of fourth to eighth auxiliary requests, all as filed with the reply to the statement of grounds of appeal.
- V. In a communication pursuant to Article 15(1) RPBA accompanying a summons to oral proceedings, the board gave its preliminary opinion.
- VI. With a letter dated 14 September 2015, the respondent resubmitted claim 1 of the third auxiliary request, submitted a new fourth auxiliary request, and resubmitted the previous fourth to eighth auxiliary requests, renumbered as fifth to ninth auxiliary requests. Further arguments were also submitted.
- VII. With a letter dated 25 September 2015, the appellants provided further arguments in response to the board's preliminary opinion and the respondent's submissions of 14 September 2015.
- VIII. Oral proceedings were held on 11 November 2015 in the absence of opponent 2.

During the oral proceedings, the respondent withdrew its previous requests and submitted new third to sixth auxiliary requests.

The respondent requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of claim 1 of one of the

third to sixth auxiliary requests, all as filed during the oral proceedings.

The appellants requested that the decision under appeal be set aside and that the patent be revoked.

IX. Claim 1 of the third auxiliary request as filed during the oral proceedings reads as follows:

"1. Communication system (100,100'),

comprising a first communication path for transmission of user information from a services station (101) to a user station (102)

as well as a second communication path for the transmission of selection information from the user station (102) to the services station (101)

the user station (102) being arranged for the issuing of data packets according to a first protocol and

the services station (101) being arranged for the receiving of data packets according to the first protocol

the second communication path comprising:

a first network (107) arranged for the transmission of data according to a second protocol,

a first device (106) for receiving data packets from the user station (102) and for supplying the data packets to the first network (107), and

a second device (108) for receiving said data packets from the first network (107) according to the second protocol and for routing the received data packets to the services station (101) via a second network (103) arranged to [sic] the transmission of data according to the first protocol, wherein said routing comprises modifying an address of the received data packets to another address."

Claim 1 of the fourth auxiliary request is identical to claim 1 of the third auxiliary request, except that the last paragraph reads as follows:

"a second device (108) for receiving said data packets from the first network (107) according to the second protocol and for routing the received data packets to the services station (101) via a second packet switching network (103) arranged to [sic] the transmission of data according to the first protocol, wherein said routing comprises modifying the addresses of the data packets to be transmitted to the services station (101) on the basis of information received over the first network (107)".

Claim 1 of the fifth auxiliary request is identical to claim 1 of the third auxiliary request, except that the last paragraph reads as follows:

"a second device (108) for receiving said data packets from the first network (107) according to the second protocol and for routing the received data packets to the services station (101) via a second network (103) arranged to [sic] the transmission of data according to the first protocol, wherein the second network is a packet switching network and the second device comprises:



- means (202) for the demodulation of received signals consisting of said data packets received from the first network,
- means (203) for the extraction of the received data packets from the demodulated signals,
- means (204) for the buffering of the received data packets,
- means (208, 210) for the modification of addresses of the buffered received data packets on the basis of information received from the first network (107),
- means (209) for the multiplexing of the data packets with the modified addresses and for the supply of the multiplexed data packets with the modified addresses to a packet switching data connection of the second network (103), and
- means (201) for the control of the device".

Claim 1 of the sixth auxiliary request is identical to claim 1 of the third auxiliary request, except that the last paragraph reads as follows:

"a second device (108) for receiving said data packets from the first network (107) according to the second protocol and for routing the received data packets to the services station (101) via a second network (103) arranged to *[sic]* the transmission of data according to the first protocol, wherein said routing of the data packets to the services station (101) comprises accessing the second device (108) via a generic access number over the first network (107), the first device (106) passing an access number of the desired services station (101) to the second device (108) by means of a data packet, the second device (108) interpreting the access number and using this information to set up a

connection to the services station (101) by means of packet switching according to the first protocol".

### **Reasons for the Decision**

1. *Claim 1 of the third auxiliary request: amendments (Article 123(2) EPC)*

1.1 Claim 1 of the third auxiliary request differs from claim 1 which the board in its first decision (T 8/11) held to meet the requirements of Article 123(2) and (3) EPC by the addition of the following feature (see point IX above):

"wherein said routing comprises modifying an address of the received data packets to another address".

The respondent argued that page 15, lines 15 and 16, of the application as filed ("By the said modification of the addressing, a large degree of freedom of addressing can be permitted."), page 15, line 10 ("- the re-routing of the data packets (addressing modification)"), and claim 10 as filed provided a basis for this additional feature.

1.2 The board notes however that the passages on page 15 relate to a description of a second device 200, which starts at page 12, line 20, and which is, with reference to Fig. 3, much more specific than the second device as claimed in present claim 1, *inter alia* due to the presence of a memory 210, which stores a switching table from which an address is read out, and an address multiplexer 208 (cf. Fig. 3).

In this respect, the board notes that claim 10 as filed defines a device (108;200) in more general terms. If

the respondent's argument that this device corresponds to the second device referred to on page 15 of the application as filed as well as to the second device referred to in present claim 1 were followed, the board notes that according to claim 10 as filed the device would comprise "means ... for modification of the addresses of data packets on the basis of information received from the first network".

In present claim 1, however, there is no equivalent which corresponds to the feature that the modification of the addresses is "based on information received from the first network" as stated in claim 10 as filed.

Consequently, present claim 1 also embraces an address modification based on information other than information received from the first network. The application as filed however does not provide a basis for such a generalisation.

- 1.3 The subject-matter of claim 1 of the third auxiliary request therefore extends beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC.
- 1.4 The third auxiliary request is therefore not allowable.
2. *Claim 1 of the fourth auxiliary request: amendments (Article 123(2) EPC)*
  - 2.1 Claim 1 of the fourth auxiliary request (see point IX above) differs from claim 1 of the third auxiliary request in that the additional feature cited above in point 1.1 is replaced by the following wording:

"wherein said routing comprises modifying the addresses

of the data packets to be transmitted to the services station (101) on the basis of information received over the first network (107)"

and in that the second network (103) is specified as a "packet switching" network.

2.2 The respondent argued that claim 10 as filed provided a basis for this feature, noting that the remaining features of claim 10 were not concerned with the routing.

2.3 In the board's judgment, however, the above-cited amendments are insufficient to overcome the objection of added subject-matter as raised in respect of claim 1 of the third auxiliary request (see point 1 above) for the following reasons:

As noted above, claim 10 of the application as filed arguably provides the most general disclosure of the second device. According to this claim, the second device would comprise, *inter alia*, "means (209) for the multiplexing of data packets and for the supply of the multiplexed data packets to a packet switching data connection of the second network (103)". Hence, according to claim 10 as filed, the routing is performed in a specific way, namely by multiplexing the modified data packets, followed by supplying them to the second network. Present claim 1 however defines the routing only in terms of modifying the addresses of the data packets and is therefore more general.

2.4 Since the application as filed does not provide a basis for other ways of arriving at data packets with modified addresses being supplied to the second network, in particular without multiplexing, the

omission of the feature relating to multiplexing causes the subject-matter of claim 1 of the fourth auxiliary request to extend beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC.

2.5 The fourth auxiliary request is therefore not allowable.

3. *Fifth auxiliary request: admissibility (Article 13(1) RPBA)*

3.1 Claim 1 of the fifth auxiliary request (see point IX above) was filed during the oral proceedings by way of a replacement of claim 1 of a previous fifth auxiliary request which had also been filed during the oral proceedings.

3.2 The admission of a new request to the appeal proceedings at such a late stage is at the board's discretion. This discretion is to be exercised, *inter alia*, in view of the need for procedural economy (Article 13(1) RPBA). Following the established case law, in this respect the question of whether or not the claim is *prima facie* allowable, i.e. overcomes existing objections and does not introduce fresh issues which seriously appear to prejudice the allowability, is relevant.

3.3 In the present case, claim 1 of the fifth auxiliary request is not *prima facie* allowable for the following reasons:

According to the claim, the second device comprises "means for the demodulation of received signals consisting of said data packets received from the first

network". It is unclear what in this context is to be understood by the term "demodulation". In this respect, the respondent referred to paragraph [0044] of the patent specification and explained that in this context demodulation was to be understood such that digital data (which, in the given example, corresponds to data packets according to the ATM protocol, i.e. ATM cells) is retrieved from the analogue signals received from the first network (which, in the given example, is a PSTN) by demodulation.

The board understands this to mean that, in the example given in paragraph [0044], the second protocol as referred to in present claim 1 is to be understood as the analogue (i.e. the modulated) version of a digital protocol (in this case ATM), without any further protocol conversion being performed by the second device. The board notes, however, that, according to paragraph [0037] of the patent specification, selection information may also be transmitted via the first network by means of the X.25 protocol. In that example, the selection information is in the form of ATM cells and is transmitted in X.25 data packets. This embodiment thus requires that the second device performs a protocol conversion in addition to a straight-forward demodulation of the received analogue signal, in order to obtain the ATM cells transmitted within the X.25 data packets.

- 3.4 Since the second device as characterised by the corresponding features in claim 1 does not define any specific means for this further protocol conversion prior to the address modification, it remains unclear whether or not the "means for the demodulation of received signals consisting of said data packets received from the first network" is such that it

provides the further protocol conversion or not. Hence, the matter for which protection is sought is unclear (Article 84 EPC).

3.5 The subject-matter of claim 1 of the fifth auxiliary request being unclear, the fifth auxiliary request is not *prima facie* allowable and is therefore not admitted into the appeal proceedings.

4. *Claim 1 of the sixth auxiliary request: amendments (Article 123(2) EPC)*

4.1 According to claim 1 of the sixth auxiliary request (see point IX above), a connection to the services station is set up by means of packet switching according to the first protocol.

The respondent referred to page 9, lines 22 to 24, and to page 9, line 24, to page 10, line 3, of the application as filed as the basis for this amendment. These passages read: "Subsequently, the device 106 uses the regular signalling protocols of the packet switching network 103 to set up a connection to the services device (server) 101." and "The device 108 interprets the access number and uses this information to set up a connection to the server requested by means of regular packet switching protocols". The respondent argued that in the light of the application, read as a whole, it would be implicit that the "regular packet switching protocols" were to be understood as the first protocol, which was the only packet switching protocol mentioned in the application as filed.

4.2 The board does not accept this argument. Whereas it is correct that the only packet switching protocol mentioned in the application as filed is the first

protocol (cf. claims 1 and 9 of the application as filed), this protocol is used in the second network for the **transmission** of data (*loc. cit.*). There is, however, no disclosure that the first protocol is used for **setting up** a connection to the server requested. There is also no technical necessity for the setting up of a connection to use the same protocol as is eventually used for the transmission of data, as argued by the respondent. After all, in an extreme example, the setting up of a connection could be arranged by voice telephony with an operator who would manually set up a connection to a target device such as a server. Once the connection had been set up, data could be transmitted through it. Obviously, the protocol according to which the data transmission takes place would be unrelated to the protocol used for the voice telephony preceding the manual set-up and the eventual set-up itself.

- 4.3 Hence, the application as filed does not provide a basis for setting up a connection to the services station by means of packet switching according to the first protocol. Therefore, the subject-matter of claim 1 of the sixth auxiliary request extends beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.
- 4.4 The sixth auxiliary request is therefore not allowable.
- 5. There being no allowable request, the patent is to be revoked.



**Order**

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

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated