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**Datasheet for the decision  
of 13 April 2021**

**Case Number:** T 2348/19 - 3.5.03

**Application Number:** 14704496.0

**Publication Number:** 2954737

**IPC:** H04W52/52, H03F1/02

**Language of the proceedings:** EN

**Title of invention:**

Power tracker for multiple transmit signals sent simultaneously

**Patent Proprietor:**

Qualcomm Incorporated

**Opponents:**

Apple Inc.

Intel Corporation (until 12 February 2021)

**Headword:**

Missing signatures/QUALCOMM

**Relevant legal provisions:**

EPC Art. 111(1), 116(1)

EPC R. 103(1)(a), 113(1), 124(3)

RPBA 2020 Art. 11, 12(8)

**Keyword:**

Decision in written proceedings - (yes): no oral proceedings necessary or appropriate  
Missing signatures of opposition division's chair - substantial procedural violation (yes)  
Remittal - fundamental deficiency in first-instance proceedings (yes)  
Reimbursement of appeal fee - (yes)

**Decisions cited:**

J 0016/17, J 0008/18, T 0390/86, T 0042/90, T 0166/91,  
T 0315/92, T 0047/94, T 1170/05, T 2076/11, T 1727/12,  
T 0989/19

**Catchword:**

If a member of the department of first instance, who participated in the oral proceedings before that department, is unable to act at the time the reasoned decision is to be issued, for example due to death or a longer lasting illness, one of the other members may sign on behalf of the incapacitated member. However, in such a situation, a written explanation as to why one member is signing on behalf of another must be provided. In the absence of such an explanation, the contravention of Rule 113(1) EPC constitutes a substantial procedural violation (see points 1.3 and 1.4 of the Reasons).



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

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Case Number: T 2348/19 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 13 April 2021**

**Appellant:** Qualcomm Incorporated  
(Patent Proprietor) 5775 Morehouse Drive  
San Diego, CA 92121-1714 (US)

**Representative:** Grosch, Marcus  
Quinn Emanuel Urquhart & Sullivan, LLP  
Mollstrasse 42  
68165 Mannheim (DE)

**Respondent:** Apple Inc.  
(Opponent 1) One Apple Park Way  
Cupertino, CA 95014 (US)

**Former Respondent:** Intel Corporation  
(Former Opponent 2) 2200 Mission College Blvd.,  
Santa Clara, CA 95052 (US)

**Representative:** Samson & Partner Patentanwälte mbB  
Widenmayerstraße 6  
80538 München (DE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 7 June 2019  
revoking European patent No. 2954737 pursuant to  
Article 101(3) (b) EPC.**


**Composition of the Board:**

<b>Chair</b>	K. Bengi-Akyürek
<b>Members:</b>	J. Eraso Helguera
	N. Obrovski

## Summary of Facts and Submissions

- I. The appeal is against the decision of the opposition division revoking the present European patent.
- II. According to EPO Form 2309.1 ("minutes of the oral proceedings - introduction of the parties"), oral proceedings were held on 5 April 2019 in the presence of all three members of the opposition division, i.e. including the chair. According to EPO Form 2309.2 ("minutes of the oral proceedings - conclusion of the proceedings"), the opposition division's revocation decision was announced at the end of the oral proceedings.
- III. EPO Form 2309.2 was signed by the second examiner and, instead of by the chair himself, by the first examiner on behalf of the chair. The electronic version of EPO Form 2309.2 bears the chair's name.

*A. darc'ere on behalf  
of F. Witt*  
With, Francis  
Chairman

  
Pieper, Thomas  
Minute Writer

- IV. EPO Form 2339 ("decision of the opposition division and instruction" dated 28 May 2019; not part of the public file) was also signed by the second examiner and, instead of by the chair himself, by the first examiner on behalf of the chair:

28.05.2019  
Date

*Adesso*  
Chairman  
With, Francis  
on behalf of  
F. With

*Adesso*  
1st Examiner  
Larcinese, Annamaria

*[Signature]*  
2nd Examiner  
Pieper, Thomas

.....  
Legally qualified member

V. EPO Form 2331 ("decision revoking the European patent" posted on 7 June 2019; part of the public file) bears the names of all three members of the opposition division, including the chair's name:

<b>Chairman:</b>	With, Francis
<b>2nd Examiner:</b>	Pieper, Thomas
<b>1st Examiner:</b>	Larcinese, Annamaria

VI. No written explanation was provided why the above-mentioned documents were signed by the first examiner on behalf of the chair rather than by the chair himself.

VII. The appellant requests that the decision under appeal be set aside and that the opposed patent be maintained as granted (main request) or in amended form according to the claims of one of three auxiliary requests. They further request "[t]o summon for oral proceedings in the event the Board of Appeal cannot comply with the [above] request based on the written proceedings".

VIII. The respondent requests that the appeal be dismissed. Oral proceedings are requested as an auxiliary measure.

## Reasons for the Decision

1. *Signatures on the reasoned decision and the minutes*
- 1.1 Pursuant to Rule 113(1) EPC, any **decision** from the European Patent Office must be signed by, and state the name of, the employee responsible.
- 1.2 The board endorses the established view that this requirement is not just a mere formality but an essential procedural step in the decision-taking process. The name and the signature serve to identify the decision's authors and express that they unconditionally assume responsibility for its content. The requirement laid down in Rule 113(1) EPC is aimed at preventing arbitrariness and abuse and at ensuring that it can be verified that the competent body has taken the decision. It therefore constitutes an embodiment of the rule of law. According to settled case law, a violation of the requirement under Rule 113(1) EPC amounts to a substantial procedural violation (cf. J 16/17, points 2.2 and 2.3 of the Reasons; T 2076/11, point 1 of the Reasons; T 989/19, point 3 of the Reasons). Moreover, a Board may address such a substantial procedural violation of its own motion (cf. T 989/19, point 2 of the Reasons).
- 1.3 If a member of the department of first instance, who participated in the oral proceedings before that department, is unable to act at the time the reasoned decision is to be issued, for example due to death or a longer lasting illness, one of the other members may sign *on behalf of* the incapacitated member. However, in such a situation, a **written explanation** as to *why* one member is signing on behalf of another must be provided (see T 1170/05, point 2.4 of the Reasons, T 2076/11,

point 3 of the Reasons, and T 989/19, point 5 of the Reasons).

- 1.4 In the absence of such an explanation, there is no guarantee that the reasoned decision accurately reflects the majority point of view of all members who have taken part in the first-instance oral proceedings and the deciding board is not able to verify whether the competent body has indeed taken the decision. Such a contravention of Rule 113(1) EPC constitutes a substantial procedural violation.
- 1.5 Furthermore, pursuant to Rule 124(3) EPC, the **minutes** of oral proceedings held must be authenticated by the employee responsible for drawing them up and by the employee who conducted the oral proceedings. A violation of this requirement also constitutes a substantial procedural violation (cf. T 2076/11, point 7 of the Reasons).
- 1.6 In the present case, the chair of the opposition division signed neither the minutes nor the reasoned decision, and in neither case a **written explanation** was provided why the first examiner signed on his behalf. Both of these incidents constitute a substantial procedural violation which affect the entire decision under appeal.
- 1.7 The fact that the chair did not sign the decision, i.e. that the decision is tainted with a substantial procedural deficiency, does not render that decision "null and void" in the sense that it never had any legal effect, contrary to the conclusions drawn in T 390/86 (cf. point 8 of the Reasons). Rather, a reasoned decision affected by such a substantial procedural violation ceases to have a legal effect only



if set aside by the competent Board of Appeal (T 2076/11, point 5 of the Reasons; see also J 8/18, point 2 of the Reasons).

1.8 The nature of the above fundamental deficiencies which are apparent in the proceedings before the opposition division justify an immediate remittal of the case to the opposition division under Article 111(1) EPC and Article 11 RPBA 2020, without entering into the merits of the case. In addition, pursuant to Rule 103(1)(a) EPC, reimbursement of the appeal fee in full is also justified.

2. *Auxiliary requests for oral proceedings*

2.1 The appellant requested oral proceedings in the event that the opposed patent is not maintained as granted or in amended form according to the claims of the pending auxiliary requests. The respondent requested oral proceedings in the event that the proprietor's appeal is not dismissed (see points VII and VIII above).

2.2 The board recalls that a request for oral proceedings under Article 116(1) EPC is required to be granted if it is envisaged that a final decision might be issued which is adverse to the party making that request (see e.g. T 47/94, point 6 of the Reasons). However, it is established jurisprudence of the Boards of Appeal that - also in *inter partes* cases - a remittal of an appeal case without any consideration of the substantive issues is not to be considered as being adverse to a party, so that no hearing before the board is deemed to be necessary or appropriate solely to discuss whether or not such a case should be remitted (see e.g. T 42/90, point 5 of the Reasons; T 166/91, point 7 of the Reasons; T 315/92, point 5 of the Reasons; T 47/94,

point 6 of the Reasons; T 1727/12, point 3 of the Reasons).

3. In view of the above, the board's decision is handed down in written proceedings (cf. Article 12(8) RPBA 2020).

## Order

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

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.
3. The appeal fee is reimbursed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated