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**Datasheet for the decision  
of 27 June 2023**

**Case Number:** T 1804/20 - 3.5.03

**Application Number:** 13768934.5

**Publication Number:** 2869484

**IPC:** H04H20/55, H04H40/00,  
G01C21/36, G01S19/13, G08G1/097

**Language of the proceedings:** EN

**Title of invention:**

System for the integration of signal-transmission/-reception technologies for highway use

**Applicant:**

Radioestrada Comunicações Ltda.

**Headword:**

Proprietary synchronisation software/RADIOESTRADA

**Relevant legal provisions:**

RPBA 2020 Art. 12(4), 12(6), 13(2)

**Keyword:**

Admittance of request filed on appeal - main request (no):  
"fresh case"  
Admittance of requests filed after summons - 1st and 2nd  
auxiliary requests: no exceptional circumstances justified with  
cogent reasons

**Decisions cited:**

T 1213/19, T 3258/19



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Case Number: T 1804/20 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 27 June 2023**

**Appellant:** Radioestrada Comunicações Ltda.  
(Applicant) Alameda Madeira, 53, conjunto 73,  
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**Representative:** Petraz, Gilberto Luigi  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 7 May 2020  
refusing European patent application  
No. 13768934.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** J. Eraso Helguera  
C. Almberg

## Summary of Facts and Submissions

I. The appeal was lodged against the decision of the examining division to refuse the present European patent application for insufficiency of disclosure (Article 83 EPC) and for lack of clarity (Article 84 EPC) with respect to the claims of a sole request filed on 19 March 2020.

II. Oral proceedings before the board were held on 27 June 2023.

The appellant's final requests were that the appealed decision be set aside and that a patent be granted on the basis of the claims of one of three claim requests:

- a **main request**, filed for the first time with the statement of grounds of appeal,
- a **first auxiliary request**, as described in the letter received on 26 June 2023 in response to the board's communication issued under Article 15(1) RPBA 2020, and as filed per e-mail on 27 June 2023 shortly before the start of the oral proceedings before the board, and
- a **second auxiliary request**, made orally at the oral proceedings before the board, and identical to the claim request on which the appealed decision was based.

The appellant further requested, as an auxiliary measure, that the case be remitted to the examining division for further prosecution.

At the end of those oral proceedings, the board

announced its decision.

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

"System for integration of technologies of transmission/reception of signals for use on highways, wherein the integrated technologies are technologies of digital uplink, band C or Ku for transmission/reception by satellite, frequency modulation (FM), for the specific application to highways, the system comprising:

a number of FM transmitter cells (110), installed physically separated among themselves, along the highway, wherein each FM transmitter cell (110) comprises a housing, a FM transmitter unit, a satellite digital receiver unit, a GPS unit, a telemetry unit and a software for synchronization, wherein the FM transmitter cells form a downlink set,

a synchronization system allowing said FM transmitter cells to work in synchrony on the same transmission frequency,

an Operational Control Center (OCC) or Radio-path Production Center (RPC) (180) for directly transmitting stereo audio signals in analog format L and R, corresponding to each highway to be covered, and

a satellite (120),

wherein digital uplink signals are transmitted to the satellite from the Operational Control Center (OCC) or Radio-path Production Center (RPC) (180), the Operational Control Center (OCC) or Radio-path Production Center (RPC) (180) being provided with an encoder able to digitalize and compress N stereo audio channels, corresponding to each content, and to each highway, the digital uplink carrying out the transmission to the satellite (120),

wherein the downlink set receives satellite signals and convert them into stereo L and R analog audio channel,

wherein downlink signals from the satellite (120) are transmitted along a road/highway on frequency modulation (FM) and on a single frequency."

Claim 1 of the **first auxiliary request** is identical to claim 1 of the main request, except for the insertion of "GPS" right before "synchronization system".

Claim 1 of the **second auxiliary request** reads as follows:

"System for integration of technologies of transmission/reception of signals for use on highways, characterized in that the integrated technologies are technologies of digital uplink, band C or Ku for transmission/reception by satellite, frequency modulation (FM), for the specific application to highways, the system comprising:

radio-path transmitting cells (110) comprising a housing; a transmitter unit in frequency modulation (FM) (150); a satellite digital receiver unit (160); a GPS unit; a telemetry unit; and a proprietary software for synchronization;

wherein uplink signals are transmitted to a satellite from an Operational Control Center (OCC) or Radio-path Production Center (RPC) (180), the Operational Control Center (OCC) or Radio-path Production Center (RPC) (180) being provided with an encoder able to digitalize and compress N stereo audio channels, corresponding to each content, and to each highway, the digital uplink carrying out the transmission to the satellite (120), while downlink signals from the satellite (120) are received by

radio-path transmitting cells (110) and transmitted on frequency modulation (FM) by means of a downlink set, the downlink set being able to receive satellite signals and convert them into stereo L and R analog audio channel; and

wherein a single frequency on frequency modulation (FM) is used along a road/highway, in a synchronized way."

### Reasons for the Decision

#### 1. MAIN REQUEST

Claim 1 of the **main request** comprises the following limiting features (board's highlighting indicating amendments vis-à-vis claim 1 of the request on which the appealed decision was based):

- (a) System for integration of technologies of transmission/reception of signals for use on highways,
- (b) ~~characterised in that~~ wherein the integrated technologies are technologies of digital uplink, band C or Ku for transmission/reception by satellite, frequency modulation (FM), for the specific application to highways, the system comprising:
- (c) ~~radio-path~~ a number of FM transmitter cells, installed physically separated among themselves, along the highway, wherein each FM transmitter cell comprises
  - a housing,
  - an FM transmitter unit ~~in FM~~,
  - a satellite digital receiver unit,
  - a GPS unit,

- a telemetry unit and
- a ~~proprietary~~ software for synchronisation, wherein the FM transmitter cells form a downlink set,
- (d) a synchronisation system allowing said FM transmitter cells to work in synchrony on the same transmission frequency,
- (e) an Operational Control Center (OCC) or Radio-path Production Center (RPC) for directly transmitting stereo audio signals in analog format L and R, corresponding to each highway to be covered, and
- (f) a satellite,
- (g) wherein digital uplink signals are transmitted to a the satellite from ~~an~~ the OCC or RPC, the OCC or RPC being provided with an encoder able to digitalise and compress N stereo audio channels, corresponding to each content, and to each highway, the digital uplink carrying out the transmission to the satellite,
- (h) wherein the downlink set ~~being able to~~ receives satellite signals and convert them into stereo L and R analog audio channel,
- (i) ~~while~~ wherein downlink signals from the satellite are ~~received by radio-path transmitting cells and transmitted along a road/highway on FM and on a single frequency by means of a downlink set; and wherein a single frequency on FM is used along a road/highway, in a synchronized way.~~

1.1 *Admittance into the appeal proceedings (Article 12(4) and (6), second sentence, RPBA 2020)*

1.1.1 The main request was filed for the first time with the statement of grounds of appeal in 2020. Its admittance is governed by Article 12(4) and (6) RPBA 2020.



- 1.1.2 The main request is substantially different from the claim set subject to the appealed decision and on which it is based (present "second auxiliary request"). The appellant has not demonstrated that the differing part was "admissibly raised and maintained" in the preceding examination proceedings. Thus, it constitutes an "amendment" which may be admitted only at the discretion of the board, which shall exercise its discretion in view of, *inter alia*, the complexity of the amendment, the suitability of the amendment to address the issues which led to the appealed decision, and the need for procedural economy (Article 12(4), first, second and third sentences, RPBA 2020).
- 1.1.3 According to the statement of grounds of appeal, whilst based on the present second auxiliary request, the main request was the result of a re-writing to better specify the system shown in figure 1 and specified on pages 3 to 5 of the originally filed description. The appellant also deleted the term "proprietary" before the expression "software for synchronisation" in claim 1, however without indicating *why* the deletion would be allowable under Article 123(2) EPC.
- 1.1.4 Only in response to the board's negative preliminary opinion on admittance of the main request, the appellant explained that the deletion of "proprietary" before "software for synchronisation" in claim 1 did not contravene Article 123(2) EPC because the term "proprietary" (as opposed to "public-domain software") did not convey any relevant technical teaching in the context of the claimed invention. In the appellant's view, the amended claims were novel and inventive, thus clearly complying with the requirements of Articles 54 and 56 EPC, and they were neither complex, nor did they raise clarity issues, and they were suitable to address

the issues which led to the appealed decision without affecting procedural economy. The appellant further submitted that the main request was clearly linked to the appealed decision and that it showed genuine efforts from the appellant's side to take care now of the issues raised in the examination proceedings. The appealed decision pivoted on two aspects, i.e. insufficiency of disclosure and lack of clarity (Articles 83 and 84 EPC), which the appellant could not have handled earlier. The appellant coped with these specific issues by introducing additional features at the earliest point in time, i.e. after the appealed decision was received. With respect to the appellant's decision not to attend the oral proceedings before the examining division, the appellant submitted that the year 2020 had been a difficult period in view of the pandemic.

1.1.5 These arguments in support of admittance are not conclusive. The board holds upfront that the appellant now turns to the board with a claim request which would require examination from the ground up in view of the additional features and an independent assessment of the available prior art. Rather, such a request should indeed have been submitted already in the examination proceedings (cf. Article 12(6), second sentence, RPBA 2020), at the latest during the oral proceedings before the examining division. In particular, the board makes the following observations in that regard:

- Initially, the appellant expressly agreed to "having the oral proceedings scheduled for 21-04-2020 as a video conference in view of the covid-19 pandemic" (cf. the minutes sent on 14 April 2020 concerning the telephone consultation held on 7 April 2020). Following that telephone

consultation, literally the same objections later appearing in the appealed decision were communicated in writing to the appellant in the annex to the summons to attend oral proceedings issued on 17 April 2020. However, the appellant did not react to those objections, nor did it inform the examining division of any particular hardship preventing it from making new filings or from attending the oral proceedings. Rather, the appellant notified the examining division on 20 April 2020 of the following:

"With reference to the subject matter and in view of provisional and non binding opinion of the Examining Division commenting the written submissions filed on 19.03.2020, we inform you that neither the Applicant nor our firm, as representative of the Applicant, will be attending the oral proceedings that will take place on 21.04.2020 at 13.00 hrs by means of videoconferencing.

We kindly ask you to provide us with the appealable decision of the Examining Division and the reasons related to it as soon as available."

- Moreover, the new set of claims constitutes a "fresh case" whose admittance would necessitate an entirely new assessment, by the board, of its compliance with at least Articles 84 and 123(2) EPC, or even a remittal to the examining division for further prosecution which would in turn be clearly detrimental to procedural economy.

1.1.6 However, the purpose of appeal proceedings is not to examine subject-matter which is substantially different

from that considered by the department of first instance. Rather, the primary object of appeal proceedings is to review in a judicial manner the correctness of the appealed decision (cf. Article 12(2) RPBA 2020).

1.2 Thus, the board did not admit the main request into the appeal proceedings (Article 12(4) and (6), second sentence, RPBA 2020).

## 2. AUXILIARY REQUESTS

Claim 1 of the **first auxiliary request** comprises all the limiting features of claim 1 of the main request and the following addition:

(j) the synchronisation system is a GPS synchronisation system.

As regards claim 1 of the **second auxiliary request**, the differences vis-à-vis claim 1 of the main request are set out in point 1 above.

2.1 *Admittance into the appeal proceedings (Article 13(2) RPBA 2020)*

2.1.1 The appellant filed the first and second auxiliary requests after notification of the summons to oral proceedings before the board. In particular, the "correct version" of the claims of the **first auxiliary request** was filed per e-mail only shortly ahead of the start of the oral proceedings before the board (around 44 minutes), whereas the request to examine the claims on which the appealed decision was based as **second auxiliary request** was made orally only during those oral proceedings. The appellant's describing, in its

written submission on the day prior to the oral proceedings before the board, of its amendment in what is the present first auxiliary request makes no difference since also that event de-passed the time of the notification of summons (with more than three months).

2.1.2 Hence, the admittance of the auxiliary requests is governed by Article 13(2) RPBA 2020. According to this provision, any amendment to a party's appeal case is, in principle, not taken into account, unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

2.1.3 The appellant submitted the following arguments in support of the admittance of the auxiliary requests:

(a) The amendment made to claim 1 of the **first auxiliary request** focused on the GPS synchronisation for the purposes of at least Article 83 EPC. The amendment was not complex and the reason to file it at such a late stage was that it was not easy to retrieve information regarding the objection raised under Article 83 EPC in the board's preliminary opinion. Moreover, it required coordination of a group of people from the appellant and from the firm entrusted with its representation.

(b) Furthermore, the **second auxiliary request** was made as a reaction to the board's intention not to admit the preceding claim requests, since the board would seemingly consider only the claims on which the appealed decision was based.

2.1.4 These arguments are not convincing.

The board must assume that the appellant had its own good reasons to replace the claim request on which the appealed decision was based with a new claim set in the statement of grounds of appeal, knowing that the new request could end up in not being admitted into the appeal proceedings by the board. There is however nothing "exceptional" in the exercise of a board's discretion to not admit such a new claim request under Article 12(4) and (6), second sentence, EPC. If anything, the board's negative preliminary opinion on admittance of the then new sole request (present "main request") is to be interpreted as an invitation to provide further *arguments* that might change the board's mind in this respect, rather than to keep trying with further claim requests in the hope that at least one of them is eventually admitted into the appeal proceedings. Thus, the board's preliminary opinion on the admittance of the main request justifies *per se* neither the filing of a further claim request nor the request to examine a claim request which had not been maintained in the statement of grounds of appeals (cf. the recent case T 3258/19, Reasons 1.1.4 citing T 1213/19, Reasons 19).

- 2.2 Accordingly, in the present case, the board cannot see "exceptional circumstances", let alone which have been justified with "cogent reasons". Thus, neither the first nor the second auxiliary request were admitted into the appeal proceedings (Article 13(2) RPBA 2020).
  
3. In the absence of any admitted claim request, the board sees also no reason to remit the case to the examining division for further prosecution, as subsidiarily requested by the appellant (cf. point II above). Rather, the appeal must be dismissed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated