

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 5 November 2024**

Case Number: T 1723/22 - 3.4.02

Application Number: 08789464.8

Publication Number: 2171402

IPC: G01D4/00, G06Q50/06

Language of the proceedings: EN

Title of invention:

METHOD, APPARATUS AND SYSTEM FOR USER-ASSISTED RESOURCE USAGE
DETERMINATION

Patent Proprietor:

Signify Holding B.V.

Opponent:

Molnia, David

Headword:

Relevant legal provisions:

EPC Art. 113(2), 101(3)(b)

Keyword:

Basis of the decision - Withdrawal of consent to the submitted
or approved version of the patent - Revocation of the patent

Decisions cited:

T 1651/14

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 1723/22 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 5 November 2024

Appellant:

(Opponent)

Molnia, David
Theatinerstrasse 16
80333 Munich (DE)

Representative:

Molnia, David
Df-mp Dörries Frank-Molnia & Pohlman
Patentanwälte Rechtsanwälte PartG mbB
Theatinerstrasse 16
80333 München (DE)

Respondent:

(Patent Proprietor)

Signify Holding B.V.
High Tech Campus 48
5656 AE Eindhoven (NL)

Representative:

Uittenbogaard, Frank
Signify Netherlands B.V.
Intellectual Property
High Tech Campus 7
5656 AE Eindhoven (NL)

Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 April 2022 concerning maintenance of the
European Patent No. 2171402 in amended form.**

Composition of the Board:

Chairman R. Bekkering
Members: C. Kallinger
B. Müller

Summary of Facts and Submissions

I. In the decision under appeal the opposition division came to the conclusion that the patent as amended according to the second auxiliary request filed on 9 November 2021 fulfilled the requirements of the EPC.

II. The opponent (appellant) lodged an appeal against the opposition division's decision and requested to set aside the decision and to revoke the patent in its entirety.

As an auxiliary measure, the opponent requested oral proceedings.

III. The patent proprietor (respondent) requested in its reply that the appeal be dismissed, i.e. that the patent be maintained in amended form based on auxiliary request 2 as filed during the oral proceedings before the opposition division on 9 November 2021.

As a fallback position, the patent proprietor requested to maintain the patent in amended form based on auxiliary requests 2 to 8 filed on 28 January 2020.

As a precaution, the patent proprietor requested oral proceedings.

IV. The board summoned to oral proceedings and, in a communication pursuant to Article 15(1) RPBA 2020, set out its preliminary, non-binding views on certain aspects of the case.

V. With a letter of 22 October 2024 the patent proprietor informed the board that they no longer approved the

text in which the patent was granted or maintained in amended form, that no amended text would be submitted and that they would not attend oral proceedings.

In addition, the patent proprietor withdrew all requests, including the request for oral proceedings in appeal proceedings.

VI. Thereupon the oral proceedings were cancelled.

VII. The parties' final requests are as follows.

The opponent requests to set aside the decision under appeal and to revoke the patent in its entirety.

The patent proprietor has no requests and no longer approves the maintenance of the patent in the text which is the subject of the decision under appeal.

Reasons for the Decision

1. Decision in written proceedings

In reply to the summons to oral proceedings and the board's communication under Article 15(1) RPBA 2020, the patent proprietor withdrew its request for oral proceedings and informed the board that it would not be attending any oral proceedings that might be held.

The opponent requested oral proceedings as a precaution, i.e. in the event that its request to set aside the decision and to revoke the patent is not granted. By this decision, the board revokes the

patent, which is why opponent's request for oral proceedings has no effect.

The board does not consider holding oral proceedings to be expedient under Article 116(1) EPC.

In the light of the foregoing, the oral proceedings were cancelled.

The parties were heard on the factual and legal aspects of the case, and the board considers it ready for decision, which is why it issues this decision in written proceedings pursuant to Article 12(8) RPBA 2020.

2. Revocation of the patent

According to Article 113(2) EPC, the European patent can only be maintained in a version to which the patent proprietor agrees. This principle applies both in opposition proceedings before the opposition division and the boards of appeal. It follows from the fact that the version of the patent is subject to the patent proprietor's power of disposition that a patent cannot be maintained against the will of the patent proprietor.

The patent proprietor stated that it no longer agreed to the maintenance of the patent in the version on which the decision under appeal was based, that it withdrew all requests and that it would not submit any amended text of the patent.

According to established case law, the patent must be revoked without substantive examination if there is no version of the patent on the basis of which the Board

can examine the appeal (see Case Law of the Boards of Appeal, 10th edition 2022, IV.D.2, T 1651/14 and the cases cited there).

As this is the case, the patent must be revoked under Article 101(3) (b) EPC.

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:



L. Gabor

R. Bekkering

Decision electronically authenticated