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File No.: T 0545/91 - 3.5.1
Application No.: 85 106 112.7
Publication No.: 0 164 611
Classification: H04Q 11/04
Title of invention: Switching system and method for network having a plurality of terminal control equipment units

D E C I S I O N
of 28 April 1993

Applicant: -
Proprietor of the patent: Fujitsu Limited
Opponent: Siemens Aktiengesellschaft, Berlin und München

Headword: Inadmissibility of opposition/Fujitsu

EPC: Art. 99(1)

Keyword: "Notice of Opposition - Admissibility" (denied)

Headnote
Catchwords



Case Number: T 0545/91 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 28 April 1993

Appellant:
(Opponent)

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Representative:

-

Respondent:
(Proprietor of the patent)

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office dated 17 April 1991
rejecting the opposition filed against European
patent No. 0 165 611 pursuant to Article 102(2)
EPC.**

Composition of the Board:

Chairman: P.K.J. Van Den Berg
Members: W.B. Oettinger
W.M. Schar-Schuppisser

Summary of Facts and Submissions

- I. The appeal contests the Opposition Division's decision, dated 17 April 1991, to reject the opposition against the European patent No. 0 164 611 granted on patent application No. 85 106 112.7 filed, claiming a priority of 17 May 1984, on 17 May 1985.
- II. That patent concerns a method and apparatus, claimed independent Claims 1 and 5 respectively, for controlling the simultaneous arrival of a plurality of calls in a switching system.
- III. The Notice of Opposition contained, after a reference to the prior art as it is presented in the patent, a reference to the problem stated to be solved by the subject-matter of the patent, and a reference to the characterizing features of Claim 1 ("setting, when any one of the terminal control equipment units ... delivers a response ...", "releasing the call status for the first incoming call of the other terminal control units ..." and "maintaining the call status for the second incoming call"), the following statements:
- These measures, which are most important and inevitable for solving the problem underlying the subject-matter of the patent, are already described in or, respectively, rendered obvious to the greatest extent by "die von der Deutschen Bundespost ... entwickelten und in der Spezifikation 1R6 niedergelegten Protokollvorschriften". Commonly accessible publications about these "Protokollarbeiten" had been available already in February 1984.

 - Also within the framework of

"CCITT-Protokollentwicklungen" similar principles of utilizing a simultaneous second call are described in respect of the D channel protocol within the framework of the project "ISDN Numbering and Addressing".

The Opponent concluded that neither in Claim 1 nor, in combination therewith, in the remaining claims any inventive surplus over these protocol regulations could be seen.

No specific reference to the independent Claim 5 was made, and no other submission was filed before expiry of the time limit for opposition.

IV. In response to a request for documents pursuant to Rule 59 EPC, the Opponent filed copies of the following document allegedly being the "Spezifikation 1R6" mentioned in the Notice of Opposition:

D1: Deutsche Bundespost - Fernmeldetechnisches Zentralamt -Referat F41: "Kennzeichenaustausch zwischen DIVO (ISDN)-Vermittlungsstellen und ISDN-Teilnehmereinrichtungen - ISDN-D -Kanal-"Protokoll - (Schicht 2 und 3)", Juni 1984.

This document bears on page 1 a note that it replaces "FTZ 1R6" issued in December 1983, it has a table of contents extending over pages 1 to 4, and it indicates on page 4 that amendments against the earlier issue are comprised on identified replacement pages.

In total it has 200 pages and its chapters are numbered in accordance with an hierarchical system.

V. In the accompanying letter, the Opponent referred, in support of its allegation of lack of inventive step, to

several passages contained in different sub-chapters of D1.

- VI. In the decision under appeal, the Opposition Division, discarding its doubts concerning admissibility of the opposition expressed earlier in a Communication pursuant to Rule 56(1) EPC and shared by the Patentee, concluded that the opposition was admissible.

It took D1, though published only after the priority date of the patent, as a base for the proceedings because all amendments to the version of December '83 seemed to be marked clearly. Since, in its view, the skilled person would, despite the size of this document, be able to locate the relevant portions by use of the references given in the index, the Opposition Division considered the requirements of reasoning and indication of the facts, evidence and arguments (Article 99(1), second sentence, and Rule 55(c) EPC) to be met.

- VII. However, considering that the grounds for opposition did not prejudice the maintenance of the patent unamended, it rejected the opposition in accordance with Article 102(2) EPC.

In its opinion, it was not obvious to a person skilled in the art, for solving the problem of enabling separate and automatic connection control even under condition of simultaneous arrival of a plurality of calls, to combine the features of three different passages dispersed over a corresponding number of sub-chapters, only loosely connected with each other, of D1.

- VIII. The appeal was lodged (in German), and the respective fee paid, on 26 June 1991 with a request that the decision be set aside and the patent revoked.

On 27 August 1991, the Appellant filed a Statement of Grounds, referring, in addition, to another sub-chapter of D1.

- IX. The Respondent, in reply, re-raised the issue of the admissibility of the opposition, referring in this respect to the earlier decision T 117/87 (OJ EPO 1989, 127).

He furthermore contested the substantive grounds of appeal.

Consequently, he requests that the appeal be dismissed, viz. either for the reason of inadmissibility of the opposition (main request) or on substantive grounds (auxiliary request).

- X. In a Communication pursuant to Article 11(2) Rules of Procedure, the Board expressed doubts as to the admissibility of the opposition, referring also to case law, e.g. T 448/89 (OJ EPO 1992, 361).

- XI. In oral proceedings held, following an auxiliary request of both parties, on 28 April 1993, these upheld their respective requests (cf. VIII and IX).

The Appellant, in support of his request, submitted that the skilled person having the information given in the patent-in-suit in mind and reading the Notice of Opposition would readily have found, on the basis of the table of contents of D1, the chapters which could be expected to be relevant for a second call problem in a network environment as claimed in the patent. On reading these chapters, he would then have been able to draw the respective conclusions for the Opponent's objection of lack of inventive step.

The Respondent disagreed in particular with the view that the skilled reader of the Notice of Opposition would have found in D1 the arguments relevant for the present case without the help of the submissions made by the Opponent after expiry of the time limit for opposition.

Reasons for the decision

1. The appeal (cf. paragraph VIII) is admissible.
2. The opposition as formulated (cf. III) is understood as being based on the ground according to Article 100(a) EPC contending that the patent in suit were lacking an inventive step. The Patentee answered primarily that the opposition was not admissible because it did not fulfil the requirements of Rule 55(c) EPC due to a failure of setting out the facts, evidence and arguments on which it was based. The contested decision held that the opposition was admissible but unfounded because the patented invention was novel and inventive (cf. VI, VII).
3. On appeal, the former Opponent (Appellant) contested again that the patented invention involved an inventive step and, in reply, the Respondent contended that the Order of the appealed decision was, in effect, right but repeated its submission made before the Opposition Division that the decision should have been based on the ground that the opposition was not admissible in the light of Article 99(1) and Rule 55(c) EPC.
4. Before turning, as the case may be, to the substantive issues the Board will thus have to consider whether the contested Decision of the Opposition

Division was based on an admissible opposition; see also T 448/89, OJ 1992, 361 (point 2), T 117/87 (point IV) and G 5/88, 7/88, 8/88 (OJ, EPO 1991, 137, point II).

5. Article 99(1) EPC states that within nine months from the publication of the mention of the grant of the European patent notice of opposition may be given and that it shall be filed in a written reasoned statement. Rule 55(c) EPC requires that said notice of opposition shall contain a statement of the extent to which the European patent is opposed and of the grounds on which the opposition is based as well as an indication of the facts, evidence and arguments presented in support of these grounds. According to Rule 56(1) a notice of opposition which does not comply with these provisions shall be rejected as inadmissible.
6. The third requirement of Rule 55(c) will only be satisfied if there is sufficient indication of the relevant facts, evidence and arguments for the reasoning and merits of the opponent's case in relation to the grounds of opposition relied upon to be properly understood by the Opposition Division and the Patentee. This must be assessed on an objective basis, from the point of view of a person skilled in the art to which the opposed patent relates (cf. T 222/85, OJ, EPO 1988, 128, point 4).
7. In the notice of opposition it was stated that the threemeasures set out in the characterizing features of Claim 1 were most important and inevitable for the solution of the patentee's problem. The Opponent went on to state that these measures were described or to the greatest extent ("weitestgehend") made obvious by a prior art document called "Spezifikation 1R6". He stated furthermore that such principles as relied upon in the

claimed problem solution were described also within the framework of "CCITT-Protokollentwicklungen".

8. It remained entirely unspecified what was meant by "CCITT-Protokollentwicklungen". No precise indication nor evidence referring to that was filed throughout the opposition proceedings.
9. It may be left aside for the time being that it was not said when the allegedly prior art document "Spezifikation 1R6" relied upon in the notice of opposition was made available to the public and that it was only contended that generally accessible publications concerning those "Protokollarbeiten" were already available in or before February 1984.
10. Although D1, a document not prepublished but "replacing" a prepublished document "FTZ 1R6" (cf IV) constituting the said "Spezifikation 1R6", comprises 200 pages, the notice of opposition does not indicate any specific text-passages within that document which would give a hint at a combination of the closest state of the art (as identified in the introductory paragraph of the notice of opposition) with the features mentioned.

Even if an expert had used the index of D1 as is claimed by the Appellant, this expert would not have arrived at the only point made by the Opponent. The latter itself made that clear in its further submission filed after the expiry of the time limit for opposition (cf. V) where it drew attention to pages 96, 109 and 116/117 of D1 and added that its conclusions were shown there or derivable from them ("zu entnehmen beziehungsweise abzuleiten"). In a further submission dated 19 February 1990 it contended that the expert would directly look at the title "3.3.1. Mehrgeräteanschluß" in D1. However this title alone extends over 86 pages (88-173). The

Appellant also failed to show why the expert would have seen these pages in synopsis. This would have been necessary because, at least prima facie, the subjects mentioned in these pages are not related insofar as they do not directly follow from or refer to each other. There is only one reference on page 116 to page 109 but these pages together do not provide such a hint either. This is confirmed by the fact, that the Statement of Grounds of Appeal refers even to another passage in D1, namely pages 88/89, which would have to be evaluated together with the ones already mentioned (cf. VIII).

11. In these circumstances the facts, evidence and arguments on which the ground for opposition, and the Opponent's request, are based cannot be regarded as having been clearly and properly set out in the notice of opposition in such a way that they would have been readily derivable from that notice. The requirement of reasoning for at least one ground of opposition in the sense of Article 99(1), second sentence, and Rule 55(c) EPC was therefore not met and no admissible opposition was filed within the time limit set by Article 99(1), first sentence.

12. Therefore, irrespective of whether the substantive points made by the Appellants or by the first instance are or are not of importance, in the present case the appeal cannot be successful due to an essential procedural requirement under the European Patent Convention, namely that the opposition was admissible, not being met.

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Kiehl

P.K.J. van den Berg