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**D E C I S I O N**  
**of 9 July 2002**

**Case Number:** T 0975/99 - 3.5.2

**Application Number:** 95850057.1

**Publication Number:** 0673103

**IPC:** H02J 7/00

**Language of the proceedings:** EN

**Title of invention:**

Apparatus for identifying and determining the remaining useful life of an individual battery pack and destroying a circuit means in the battery pack when it reaches the end of its useful life

**Applicant:**

ERICSSON INC.

**Opponent:**

-

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 123(2)

**Keyword:**

"Added subject-matter - (yes)"

**Decisions cited:**

-

**Catchword:**

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Boards of Appeal

Chambres de recours

**Case Number:** T 0975/99 - 3.5.2

**D E C I S I O N**  
**of the Technical Board of Appeal 3.5.2**  
**of 9 July 2002**

**Appellant:** ERICSSON INC.  
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**Representative:** O'Connell, David Christopher  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 25 May 1999  
refusing European patent application  
No. 95 850 057.1 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** W. J. L. Wheeler  
**Members:** J.-M. Cannard  
P. Mühlens

## Summary of Facts and Submissions

- I. The appellant contests the decision of the examining division to refuse European patent application No. 95 850 057.1. The reasons given for the refusal were firstly that because one of the described embodiments did not fall within the scope of the claims the claims were not clear as required by Article 84 EPC and secondly that the application had been amended in a manner which contravened Article 123(2) EPC.
- II. On 18 February 2002, the Board issued a communication with a summons to oral proceedings. The communication explained that in the Board's provisional opinion the application had been amended in a manner which contravened Article 123(2) EPC. Regarding the auxiliary request, according to which the applicant "approves of the proposals made by the Examiner in the Official letter dated June 9, 1998, and hereby authorizes amendment of the application according to these proposals", it was explained that the proposed claim 1 contravened Article 123(2) EPC. With reference to Article 84 EPC, it was observed in respect of both requests that there was some doubt as to the matter for which protection was sought.
- III. On 7 June 2002 the appellant filed amended claims 1 to 5, amended pages 4, 5 and 10 of the description and cancelled Figures 3A and 3B of the drawings. Towards the end of the accompanying letter, it was remarked "it is hoped that the Board of Appeal will now find the application in order, thereby avoiding the need for oral proceedings."

IV. Claim 1 now reads:

"An apparatus for controlling the recharging of a battery pack having at least one resistor ( $R_1$ ,  $R_2$ ) having a particular resistance value, the apparatus comprising:

a supervising unit (12) for reading the particular resistance value of said at least one resistor to determine the individual identity of the battery pack (10);

means for controlling a recharging operation of said battery pack responsive to said supervising unit, wherein said means for controlling comprises means (16, 18) for determining remaining useful life of said battery pack depending on the number of charging cycles performed on said battery pack identified by said supervising unit and a level of discharging of said battery pack at each discharging cycle; and

circuit means connected to said battery pack for allowing recharging of said battery pack, characterized in that said apparatus further comprises

means (40) for short-circuiting the terminals of said battery pack in response to said means for determining to prevent said battery pack from being recharged."

Claims 2 to 5 are dependent on claim 1.

V. On 18 June 2002 the Board issued a communication by fax in which it was pointed out that claim 1 appeared to contravene Article 123(2) EPC. Some other deficiencies were mentioned as well. The communication ended with a

warning that unless the objections were remedied "the Board cannot order grant of a patent and the oral proceedings have to be held as scheduled."

VI. In a letter dated 2 July 2002 (received 3 July 2002) the applicant stated: "we hereby withdraw our request for oral proceedings, and inform you that we will not be attending the oral proceedings scheduled for 9 July 2002."

VII. Oral proceedings were held on 9 July 2002 in the absence of the appellant. It was noted that according to the file the appellant had requested in writing that the decision under appeal be set aside and a patent be granted on the basis of claims 1 to 5 and description pages 1 to 11, both filed with the letter dated 7 June 2002, drawings Figures 1 and 2 as originally filed.

### **Reasons for the Decision**

1. The appeal is admissible.
  
2. Claim 1 relates to an apparatus for controlling the recharging of a battery pack and includes in combination the features recited in claims 1, 2, 3 and 7 as originally filed, except that "means for short-circuiting the circuit means" (connected to the battery pack for allowing recharging of said battery pack) recited in claim 7 as originally filed has been amended to read "means for short-circuiting the terminals of the battery pack".
  - 2.1 There is no mention in the claims of the application as filed of means for short-circuiting the terminals of

the battery pack. Nor are such means directly and unambiguously derivable from the means for short-circuiting the circuit means connected to the battery pack for allowing recharging of the battery pack which are mentioned in these claims.

- 2.2 The only disclosure in the application as filed of means for short-circuiting the terminals of the battery pack is restricted to **a transistor**, which is **not** disclosed as forming part of the apparatus (see published application, column 7, lines 4 to 7). Accordingly the application as filed contains no disclosure of more general means for short-circuiting the terminals of the battery pack, nor any disclosure that such means forms part of the apparatus as recited in claim 1 (as distinct from being part of the battery pack).
3. The Board therefore concludes that claim 1 as filed on 7 June 2002 contravenes Article 123(2) EPC, and, for that reason the request cannot be granted and the appeal must be dismissed.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

D. Sauter

W. J. L. Wheeler