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**D E C I S I O N**  
**of 19 December 2000**

**Case Number:** T 0348/00 - 3.5.1

**Application Number:** 90908068.1

**Publication Number:** 0471025

**IPC:** H04N 7/173

**Language of the proceedings:** EN

**Title of invention:**  
VIDEO SELECTION AND DISTRIBUTION SYSTEM

**Patentee:**  
ON COMMAND VIDEO CORPORATION (a Delaware Corporation)

**Opponent:**  
British Telecommunications public limited company

**Headword:**

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**Relevant legal provisions:**

EPC Art. 102(3)(a)  
EPC R. 113(2)

**Keyword:**

"Revocation of the patent at the request of all the parties  
(yes)"

**Decisions cited:**

T 0186/84

**Catchword:**

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Case Number: T 0348/00 - 3.5.1

**D E C I S I O N**  
**of the Technical Board of Appeal 3.5.1**  
**of 19 December 2000**

**Appellant/other party:** British Telecommunications public limited  
(Opponent) company  
81 Newgate Street  
London EC1A 7AJ (GB)

**Representative:** Evershed, Michael  
BT Group Legal Services  
Intellectual Property Department  
8th Floor, Holborn Centre  
120 Holborn  
London EC1N 2TE (GB)

**Appellant:** ON COMMAND VIDEO CORPORATION (a Delaware  
(Proprietor of the patent) Corporation)  
3301 Olcott Street  
Santa Clara  
CA 95054 (US)

**Representative:** Cross, Rupert Edward Blout  
BOULT WADE TENNANT  
Verulam Gardens  
70 Gray's Inn Road  
London WC1X 8BT (GB)

**Decision under appeal:** Interlocutory decision of the Opposition Division  
of the European Patent Office posted 24 January  
2000 concerning maintenance of European patent  
No. 0 471 025 in amended form.

**Composition of the Board:**

**Chairman:** P. K. J. van den Berg  
**Members:** R. Randes  
S. C. Perryman

## **Summary of Facts and Submissions**

I. On 20 March 2000 the opponent O2 filed an appeal against the interlocutory decision of the opposition division to maintain the patent in amended form. On 30 March 2000 also the proprietor filed an appeal against that decision.

II. On 25 May 2000 the patentee filed a statement of grounds of appeal and on 2 June 2000 the opponent in its statement of the grounds of appeal requested the revocation of the patent in its entirety.

III. On 7 December 2000 the proprietor's representative on behalf of the proprietor in a letter requested:

"I hereby withdraw the Appeal of the Patentee against the Decision of the Opposition Division in the above European patent.

Furthermore, with regard to the Appeal by the Opponent, the Patentee hereby requests revocation of the patent.

In accordance with the above requests, I look forward to receiving the final Decision of the Board of Appeal revoking the patent in the near future."

## **Reasons for the Decision**

1. The appeals are admissible.
2. It is established case law, that a request by a patent proprietor to revoke a patent has to be interpreted in the way, that the patent proprietor withdraws his

consent to the granted text of the patent (or to any other text of the patent proposed before the revocation request made by him) and that any substantive examination of the alleged impediments to patentability is precluded (cf. T 186/84, OJ 1986, 79).

Since the patent proprietor in the present case has expressly requested revocation of his patent, there does not exist any text of the patent approved by him. All parties now request revocation of the patent. Thus, the patent has to be revoked in accordance with established case law.

## **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:

M. Kiehl

P. K. J. van den Berg