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D E C I S I O N
of 24 March 2004

Case Number: T 0379/01 - 3.5.1

Application Number: 91907657.0

Publication Number: 0525014

IPC: H04B 1/16

Language of the proceedings: EN

Title of invention:
Receiver for satellite reception

Patentee:
THOMSON multimedia Sales UK Limited

Opponent:
Interessengemeinschaft für Rundfunkschutzrechte e.V.

Headword:
Inspection of files/THOMSON

Relevant legal provisions:
EPC Art. 128(4)
EPC R. 93

Keyword:
"Exclusion of a document from file inspection (no)"

Decisions cited:
G 0003/97, Decision of the President of the EPO dated
7 September 2001 concerning documents excluded from file
inspection.

Catchword:

1. The provisions concerning the exclusion of documents from file inspection lay down exceptions from the principle of public inspection of files pursuant to Article 128(4) EPC, thus requiring a narrow construction of these provisions. In particular if a key document relating to a fundamental issue in an *inter partes* case, such as contested admissibility of an opposition, is concerned, a strict standard has to be applied.

2. In view of the public interest in accessing evidence relevant for deciding a case, a merely abstract prejudice to hypothetical personal or economic interests is not a sufficient bar in this connection. The party requesting such exclusion should rather show that public access to certain documents would be prejudicial to specific and concrete personal or economic interests.



Case Number: T 0379/01 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 24 March 2004

Appellant: Interessengemeinschaft
(Opponent) für Rundfunkschutzrechte e.V.
Bahnstrasse 62
D-40210 Düsseldorf (DE)

Representative: Eichstädt, Alfred, Dipl.-Ing.
Maryniok & Eichstädt,
Kuhbergstrasse 23
D-96317 Kronach (DE)

Respondent: THOMSON multimedia Sales UK Limited
(Proprietor of the patent) Crown Road
Enfield, Middlesex EN1 1DZ (GB)

Representative: Rossmanith, Manfred, Dr.
Deutsche Thomson-Brandt GmbH
European Patent Operations
Karl-Wiechert-Allee 74
D-30625 Hannover (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 29 January 2001
rejecting the opposition filed against European
patent No. 0525014 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: S. V. Steinbrener
Members: B. J. Schachenmann
R. Randes

Summary of Facts and Submissions

- I. The opponent/appellant appealed against the decision of the opposition division rejecting its opposition against European patent No. 0 525 014.
- II. During the appeal proceedings the proprietor/respondent argued that the opposition was not admissible since the opponent having the legal status of an "Eingetragener Verein" under German law acted on behalf of a third party in the context of activities which, taken as a whole, were typically associated with professional representatives. However, the person who had signed the notice of opposition did not possess the relevant qualifications required by Article 134 EPC. According to decision G 3/97 (OJ EPO 1999, 245) of the Enlarged Board of Appeal this had to be regarded as a circumvention of the law rendering the opposition inadmissible.
- III. In a first communication dated 21 July 2003, the Board asked the respondent to file all material (facts, arguments, evidence) he wanted to rely on in this connection.
- IV. With letter dated 8 September 2003 the respondent *inter alia* filed a copy of the rules of the association ("Satzung der Interessengemeinschaft für Rundfunkschutzrechte e.V. (IGR) in der Fassung vom 8. Mai 1985") of the opponent.
- V. With letter dated 5 November 2003 the appellant withdrew its appeal. On the same date the appellant requested that the document "Vereinssatzung" filed by

the respondent be excluded, under Rule 93 EPC, from file inspection since it had been filed only for the purpose of informing the Board and the parties to the proceedings but not for being made accessible to the public.

VI. In a communication dated 14 November 2003 the Board indicated that, even though the appeal had been withdrawn, the appellant's request was an ancillary issue still to be decided by the Board. It was pointed out that the document in question had been filed by the respondent without any reservation as evidence for the allegation that the opposition was inadmissible and that the appellant had not given any reason why inspection of this document by third parties would be prejudicial to legitimate personal or economic interests.

VII. With letter dated 7 January 2004 the appellant, in support of its request, argued that in connection with associations registered under German law ("eingetragener Verein") a distinction had to be made between the interrelation of the members of the association and the relation of the association to third parties. As far as the latter was concerned third parties could easily inform themselves by requesting an excerpt from the register of associations. However, the rules of an association ("Vereinssatzung") normally contained purely internal information on its structure and the interrelation of its members so that free access to such information would violate the personal rights of the association and its members. These personal rights were protected by German law, i.e. § 34 FFG ("Gesetz über die Angelegenheiten der freiwilligen

Gerichtsbarkeit") according to which any person may not obtain inspection of court files unless a legitimate interest can credibly be shown ("als er ein berechtigtes Interesse glaubhaft macht"). The protection of the recognized personal rights referred to above would be rendered ineffective, if the document in question was accessible to unlimited public inspection.

VIII. The respondent did not make any comments on the Board's communication.

Reasons for the Decision

1. According to Article 128(4) EPC, subsequent to the publication of the European patent application, the files relating to such applications and the resulting European patent may be inspected on request, subject to the restrictions laid down in the Implementing Regulations. Rule 93 EPC lists the parts of the file which shall be excluded from inspection pursuant to Article 128(4) EPC. Rule 93(d) EPC in this context refers to "any other document excluded from inspection by the President of the European Patent Office on the ground that such inspection would not serve the purpose of informing the public about the European patent application or the resulting patent".

2. Based on this provision the President of the EPO issued a decision dated 7 September 2001 concerning documents excluded from file inspection (OJ EPO 2001, 458). According to paragraph (2)(a) of this decision documents shall be excluded from file inspection at the

- reasoned request of a party if their inspection would be prejudicial to the legitimate personal or economic interests of natural or legal persons.
3. The present case concerns opposition appeal proceedings in the course of which the proprietor contested the admissibility of the opposition based on the argument that the opponent, an association registered under German law, had filed the opposition as a professional representative for a client without possessing the relevant qualifications under Article 134 EPC (see point II, supra). In support of this contention the proprietor filed the rules of the association ("Vereinsatzung") as evidence for the purpose of the association ("Vereinszweck").

 4. As was pointed out in point 5 of the reasons of the decision G 3/97 of the Enlarged Board of Appeal, the burden of proof for a straw man objection is to be borne by the person raising the issue i.e., in the present case, the patent proprietor. Before considering an opposition to be inadmissible, the deciding body has to be satisfied, on the basis of clear and convincing evidence, that the law has indeed been circumvented in an abusive manner. In this context it appears that the document "Vereinsatzung" filed by the proprietor/respondent in the present case would have been an essential means of giving evidence. Consequently, a substantial public interest in making such evidence accessible to third parties by file inspection cannot be denied.

5. Such evidence can only be excluded from file inspection if it is prejudicial to the legitimate personal or economic interests of a natural or legal person involved (see point 2, supra). In view of the public interest in accessing evidence relevant for deciding a case, it appears that, in this connection, a merely **abstract** prejudice to hypothetical personal or economic interests is not a sufficient bar. The party requesting such exclusion should rather show that public access to certain documents would be prejudicial to **specific and concrete** personal or economic interests.

6. In the circumstances of the present case the appellant did not show in which respect public access to the rules of the association would be prejudicial to specific personal interests of the association. Instead, it was argued that unlimited public access to the rules of associations registered under German law would in general violate the personal rights of the associations and its members. This was derived from German law according to which the access to the register of associations ("Vereinsregister") was allegedly limited to persons showing to have a legitimate interest in the inspection of the register (see point VII, supra). However, as mentioned above, the exclusion of a document from file inspection under Rule 93 EPC is only justified if its inspection would be prejudicial to specific personal or economic interests of somebody.

- 6.1 The provisions referred to in points 1 and 2 above concerning the exclusion of documents from file inspection lay down exceptions from the principle of public inspection of files pursuant to Article 128(4) EPC, thus requiring a narrow construction of these

provisions. In particular if a key document relating to a fundamental issue in an *inter partes* case is concerned, such as the contested admissibility of an opposition, a strict standard has to be applied.

6.2 Even if, according to the assertion of the appellant, the access to the register of associations under German law was subject to certain restrictions, the register is, in principle, open to public inspection (see German Civil Code § 79 BGB: "Die Einsicht des Vereinsregisters sowie der vom Verein bei dem Amtsgericht eingereichten Schriftstücke ist jedem gestattet"). It appears that the restrictions referred to by the appellant rather serve the purpose of protecting the register from abusive inspections. e.g. for purely commercial reasons, and excessive administrative workload, but not the purpose of keeping the registered information secret.

6.3 This is confirmed by the fact that the document in question was filed by the respondent who obviously had access to it. It can hardly be denied that at least the respondent had a legitimate interest in inspecting the register of associations and could therefore obtain the filed document without restrictions as to its further use. The same must be possible for third parties having similar legitimate interests in proceedings before the EPO. This would, however, not be the case, if such document was excluded from file inspection.

6.4 In addition, it has to be considered that the document in question was filed by the proprietor on 9 September 2003 without any reservation and remained in the open part of the file until it was provisionally excluded from public inspection upon the appellant's request of

5 November 2003. Thus, the document was open for public inspection during nearly two months before the appellant requested its exclusion.

7. The Board therefore finds that the appellant's request is neither supported by Rule 93 EPC nor by the decision of the President of the EPO referred to above.

Order

For these reasons it is decided that:

The appellant's request for excluding the document "Satzung der Interessengemeinschaft für Rundfunkschutzrechte e.V. (IGR) in der Fassung vom 8. Mai 1985" from file inspection is rejected.

The Registrar:

The Chairman:

M. Kiehl

S. Steinbrener