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D E C I S I O N
of 21 February 2005

Case Number: T 0402/01 - 3.5.1
Application Number: 94927728.9
Publication Number: 0723687
IPC: G06K 7/10, G06K 17/00
Language of the proceedings: EN

Title of invention:
Data entry systems

Patentee:
Dataquill Limited

Opponent:
ALCATEL

Headword:
Data entry system/DATAQUILL

Relevant legal provisions:
EPC Art. 56, 111(1), 113(1), 114(1), 125

Keyword:
"Automatic remittal after citation of a new document in response to change in factual framework resulting from proprietor's amendments (no)"

Decisions cited:
G 0010/91, T 0273/84, T 0326/87, T0097/90, T 0611/90/,
T 0852/90, T 0557/94, T 0966/95

Catchword:

A patent proprietor has no automatic right of remittal after the citation of a new document with the grounds of appeal, even if there is a change in factual framework, at least in cases where the document is filed in reaction to amendment of the claim, providing that both parties' right to a fair hearing (Article 113(1) EPC) is not jeopardised.

The right to a fair hearing comprises the right to be heard, explicitly required by Article 113(1) EPC, and the general principle of equal treatment of parties, implied by Article 113(1) EPC in combination with Article 125 EPC.

(See points 10 and 11 of the reasons).



Case Number: T 0402/01 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 21 February 2005

Appellant:
(Opponent)

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Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted
2 February 2001 concerning maintenance of
European patent No. 0723687 in amended form.

Composition of the Board:

Chairman: S. V. Steinbrener
Members: W. E. Chandler
B. J. Schachenmann

Summary of Facts and Submissions

I. This appeal is against the interlocutory decision of the opposition division concerning maintenance of European patent No. 0 723 687 in amended form. Opposition had been filed against the patent as a whole based *inter alia* on Article 100(a) EPC in conjunction with Article 56 EPC.

The opposition division held that claim 1 of the proprietor's main request as amended during the oral proceedings met the requirements of the EPC, having regard *inter alia* to:

E2: GB-A-2 202 664

E3: US-A-4 916 441

II. The opponent (appellant) appealed the decision and, in the grounds of appeal, dated 11 June 2001, introduced further evidence *inter alia* in the form of:

E13: IBM TouchMobile Information and Planning Guide, March 1993, IBM, NY, US.

E14: IBM TouchMobile Solution for data capture and communication, January 1993, IBM, NY, US.

E16: PR Newswire, January 1993: "IBM's TouchMobile helps field workers collect data at the touch of a finger".

III. In a response, the respondent (proprietor) requested that the new documents not be admitted into the proceedings, and that, if they were, the case be

remitted to the opposition division for further consideration. The respondent also enclosed a copy of a fax that a representative of the opponent sent to the patent proprietor before the end of the opposition period.

IV. In a reply to the Board's communication accompanying the summons to oral proceedings, the respondent requested a postponement of the oral proceedings as the representative had recently changed firms and the previous firm had not yet released all the documents relevant to the appeal. The Board allowed the postponement. In a further letter, the respondent filed new claims of a main and seven auxiliary requests.

V. At the oral proceedings on 8 December 2004, the appellant requested that the decision under appeal be set aside and the patent be revoked. The respondent requested that the appeal be dismissed and that the patent be maintained on the basis of claim 1 of a main request as amended during the oral proceedings, or claim 1 of a first to fourth auxiliary request as amended during the oral proceedings. At the end of the oral proceedings, the Chairman closed the debate, and declared that the decision would be given in writing.

VI. Claim 1 of the **main request** reads as follows:

"A data entry system enabling a user to select one or more items from a catalogue and to telephonically transmit information relating to the user selections to a remote processing centre, said system comprising:

a hand holdable data entry unit (10), said data entry unit (10) comprising:

a reading sensor (14, 90) configured to sense commands and data and to produce input signals in response to said sensed commands and data;

rewritable storage (78) programmed with a catalogue of information relating to a plurality of items from which, by means of said reading sensor (14,90), a user can select one or more items to define said user selections;

a controller (74) connected to receive and process said input signals from said reading sensor (14,90), said controller being arranged to respond to sensed commands to control said data entry unit (10) and said controller (74) also being arranged to respond to sensed data to select an item from said catalogue for inclusion in said user selections;

a display screen (20) configured to display a user readable representation of said commands and said stored information for the selected item;
said system further comprising:

a telecommunications interface (52,94,116) configured to telephonically transmit information relating to said user selections from said storage (78) to a remote processing centre (108) via a telecommunications network (50) in response to a user operation and also to telephonically receive information relating to selectable items from said remote processing centre (108) via said telecommunications network (50) and store such information in said storage (78), said

controller (74) additionally being configured to be responsive to a said sensed command to cause downloading of information from the remote processing centre (108) as required to update the information in the catalogue stored in said rewritable storage (78), said information pertaining to one or more of said selectable items."

In claim 1 of the **first auxiliary request**, the wording "said sensed command" in the last feature is replaced by "said sensed update command, user input by means of said reading sensor,"

Claim 1 of the **second auxiliary request** adds to the previous request, before the feature of the reading sensor, the feature:

"a speaker (95) and microphone (752) to permit the data entry unit to be operated as a telephone;"

Claim 1 of the **third auxiliary request** adds to the previous request, at the end, the feature:

"and wherein said telecommunications interface is integral to the data entry unit (10) and directly connects said data entry unit to said telecommunications network (50)."

Claim 1 of the **fourth auxiliary request** replaces the opening part and first feature (hand holdable data entry unit) of the previous request by:

"A hand holdable data entry unit arranged to provide the functions of a telephone, the unit enabling a user to select one or more items from a catalogue and to telephonically transmit information relating to the

user selections to a remote processing centre, said unit (10) comprising:"
and replaces the last feature by:
"and wherein said telecommunications interface is an interface configured to connect to a wireless telecommunications network, is integral to the data entry unit (10) and directly connects said data entry unit to said telecommunications network (50)."

VII. The appellant argued essentially as follows:

The new documents should be introduced into the proceedings because they related specifically to databases, which was the concept that the patent proprietor had introduced with the amendment to claim 1 during the oral proceedings before the opposition division.

Claim 1 differed from the TouchMobile system disclosed in E13 and E14 in that the updating of the database of information was initiated by the mobile unit in response to a sensed command instead of automatically. This was merely one of only the two available possibilities and did not involve an inventive step.

In the first auxiliary request, there was no support in the original disclosure for the amendment specifying an update command. Furthermore, this did not add anything inventive.

In the second auxiliary request, it was not inventive to provide a telecommunications interface with the well known functions of a telephone, particularly in the

light of the fact that there was no interaction with the data collection functions.

In the third auxiliary request, there was no technical effect, and no invention, in placing a known unit (telecommunications interface) in another place (integral with the data entry unit).

In the fourth auxiliary request, the change from system to unit was an extension of scope. It was also known to use wireless communication at the priority date of the patent so that such use was not inventive.

VIII. The respondent argued essentially as follows:

The new documents were no more relevant than the existing ones. In particular, the argument that they were introduced in response to the amendment of claim 1 to include a "database" was not tenable because the embodiments of the invention had always stated that a merchandising catalogue was provided in electronic form in the rewriteable storage, so that the opponent's original search should have taken this feature into account.

If the new documents were admitted into the proceedings, then the case should be remitted to the opposition division to give the proprietor two opportunities to present his arguments in respect of these new documents.

Claim 1 as amended during the oral proceedings differed from the TouchMobile system in that the hand-held terminal contained a catalogue of information from which the user selected items, and by a command to

cause downloading of data from the remote processing centre to update the information in the catalogue. E13 only disclosed that the vehicle docking station gave the portable terminal the ability to receive "additional information".

The figure on page 3 of E14 did disclose data uploading and downloading at the stationary docking station to onboard databases on the portable data collection terminal, but not a command to cause downloading of information for updating a database of information previously stored in the terminal.

The passage on the right hand side of page 5 of E14 described a transfer of information overnight, which did not suggest being the result of a command input at the terminal.

The remaining disclosure of the TouchMobile system, especially that in E16 of replacing previous processes with computer-based data collection and wireless two-way communication capability for transmitting data and messages, was very general and unspecific.

In the first auxiliary request, the update command was supported by the patent at column 13, lines 45 to 50, which disclosed control logic that must respond to such a command.

Although the speaker, microphone and functions of a telephone of the second auxiliary request were conventional, their incorporation in the data entry unit resulted in a particularly effective and successful unit. The product was ahead of its time and not suggested in the prior art.

The integration claimed in the third auxiliary request resulted in further effectiveness and attractiveness of the product.

The use of wireless communication in combination with a data entry unit according to the fourth auxiliary request was described as a "quantum leap of design evolution" in the paragraph bridging the second and third pages of the fax from the representative of the appellant's company to the patent proprietor.

Reasons for the Decision

1. The appeal complies with the requirements referred to in Rule 65(1) EPC and is, therefore, admissible.
2. The patent relates essentially to a data entry system capable of selecting items from a catalogue stored in a database and transmitting the selected items to a remote processing centre and also capable of receiving updated catalogue information, all functions in response to a user operation.

New documents E13, E14 and E16

3. The appellant filed documents E13, E14 and E16 with the grounds of appeal and argued that this was justified because the documents related specifically to databases, which was the concept the patent proprietor had introduced with the amendment to claim 1 during the oral proceedings before the opposition division. The respondent argued that they should not be admitted into the proceedings because they were no more relevant than

- the existing documents and that the opponent's original search should have found them because the embodiments of the invention had always stated that a merchandising catalogue was provided in electronic form in the rewriteable storage.
4. Firstly, the Board notes that the minutes of the oral proceedings before the opposition division, at page 2, first and second paragraphs, show that claim 1 of the main request, i.e. the claim without the amendment to specify a database, was not considered to be new over E2, and that the proprietor amended the claim to make clear that the information stored in the rewritable storage was a database that was updated. This distinguished the data stored in the unit from the data making up the order in E2. The amendment was therefore pivotal in maintaining the patent. Moreover, the Board judges that E13, E14 and E16 are more relevant than the other documents, especially E2, because the TouchMobile system that they disclose is a handheld data entry unit containing an updatable database, which is the subject of the amendment.
 5. Secondly, the Board judges that it was not unambiguously clear from any of the granted claims that the data entry unit contained such a database. The claims only contained vague formulations such as storage "programmable" with information "relating" to "selectable" items (claim 1) or information "for" selectable items (claim 11). Thus the amendment had the effect of limiting the invention to a more specific embodiment, namely data entry units containing databases that are updated. The opponent is only obliged to cite documents to substantiate the grounds

of opposition to the extent opposed, namely as defined by the claims. It cannot be expected that the documents are the most relevant for any amendment not disclosed in the claims. The Board therefore judges that the new documents were filed in response to the patent proprietor's amendment.

6. Finally, the Board is satisfied that the appellant introduced the documents at the earliest possible moment, i.e. with the grounds of appeal, and that the respondent has had an adequate opportunity to assess them.
7. For these reasons the Board admits E13, E14 and E16 into the proceedings.

Remittal of the case to the first instance

8. After admitting the new documents into the proceedings, the Board has considered its discretion under Article 111(1) EPC whether to remit the case to the opposition division for further prosecution, as initially requested by the respondent.
9. The early case-law of the boards of appeal in exercising this discretion recognises the desirability of remittal when new evidence filed for the first time in appeal puts or may put the patent in jeopardy. In particular, when the new evidence becomes the closest prior art, or is highly relevant (see T 273/84, OJ 1986, 346 or T 326/87, OJ 1992, 522), or raises a new ground of opposition (see T 97/90, OJ EPO 1993, 719 - now rather an exceptional situation in the light of G 10/91), or raises an existing ground based on a fresh

category of evidence (prior use - see T 611/90, OJ 1993, 50). More recent case-law admits of situations where a board has or would have revoked the patent taking into account a new document. This has occurred where there was only an amplification of the case, albeit a significant one (T 852/90), where the board considered that the opposition division would have revoked the patent anyway (see T 557/94), and where there was no substantial change in the factual framework of the case (see T 966/95). In T 966/95, the Board emphasised that remittal of a case results in a substantial delay of the procedure and involves additional costs for all the parties and the Office. The Board concluded that there was no automatic right to remittal after the citation of a new document so that remittal should rather be an exception.

10. In the present case, the new documents represent closer prior art than those already on file, so it could be argued that there has been a substantial change in the factual framework, even if it is not as extreme as a new ground or a fresh category of evidence. However, there is another important consideration, namely that claim 1 was amended during the oral proceedings before the opposition division, as discussed above. As a consequence, the respondent has also changed the factual framework. The Board judges that this counteracts the argument in favour of remitting based on the change in factual framework, and shifts the balance in favour of other aspects, such as legal certainty. If this were not the case, a patent proprietor's amendments, if admitted, necessitating further prior art, would always cause delay in bringing the case to a conclusion, which prolongs uncertainty

and is generally not in the interest of third parties. In the present case, the Board considers that remittal is not desirable because the patent was granted in 1998, i.e. over six years ago. The Board concludes that, in effect, the patent proprietor has no automatic right of remittal after the citation of a new document with the grounds of appeal, even if there is a change in factual framework, at least in cases where the document is filed in reaction to amendment of the claim, providing that both parties' right to a fair hearing (Article 113(1) EPC) is not jeopardised.

11. The right to a fair hearing comprises the right to be heard, explicitly required by Article 113(1) EPC, and the general principle of equal treatment of parties, implied by Article 113(1) EPC in combination with Article 125 EPC. The Board judges that both aspects are satisfied in the present case. Concerning the right to be heard, the Board is satisfied that both parties have had ample time to consider the new aspects of the case since the new documents were filed at the earliest possible time in appeal, with the grounds of appeal, i.e. over three years before the oral proceedings, and the respondent has twice been able to file new requests. Concerning equal treatment, the Board judges that neither party would be unfairly disadvantaged if the Board were to decide the case based on the new documents. The appellant, like the respondent, has been limited to arguing the new case in front of one instance, i.e. in appeal proceedings, since the claim on which the appeal is based was only submitted at the end of the first instance proceedings.

12. Accordingly, the Board judges that it is not appropriate to remit the present case to the opposition division for further consideration, but to decide the case itself under Article 111(1) EPC.

Main request

13. The Board judges that the TouchMobile data entry system described in documents E13 and E14 is the closest prior art for claim 1. Firstly, the system involves data collection, two-way communication of data and updating a database (see E13, page 2, first paragraph and E14, page 1, third paragraph), as does the amended claim 1.

Secondly, as stated by the appellant at point 4.2 of the grounds of appeal and not disputed by the respondent, E13 discloses all the hardware features of claim 1 as follows:

A data entry system comprising:

- a hand holdable data entry unit (page 3, "The 7684 Portable Data Collection Terminal", first paragraph), said data entry unit comprising:

- a reading sensor (page 3, " The 7684 Portable Data Collection Terminal", bullet: liquid crystal touch-sensitive display);

- rewritable storage (page 3, bullet: 1.5MB of system storage);

- a controller (page 3, bullet: 80C88 microprocessor);

- a display screen (page 3, bullet: liquid crystal touch-sensitive display);

said system further comprising:

- a telecommunications interface (page 6, first and third paragraphs: "Vehicle Docking Station" and modem).

14. Claim 1 can thus only differ from the TouchMobile system by its function. In the written proceedings, it was agreed (grounds of appeal, point 4.3 and response, point 4.2) that this difference was at least that the database (catalogue) was updated in response to a sensed command. The respondent considered (points 4.2 and 4.4) that there were additional differences, namely that the hand-held terminal had a database (catalogue), and that there was downloading of information from the remote processing centre for updating the database. At the oral proceedings, the respondent argued that the amended claim additionally differed in that the user selected items from a catalogue by means of data from the reading sensor.

15. Unfortunately, contrary to the wish expressed at point 10 of the Board's communication that the differences between claim 1 and the prior art should be determined precisely, during the oral proceedings neither party offered a feature by feature analysis of the amended claim 1. Instead, the appellant argued that various features of the claim were present in the prior art documents, and the respondent stated the above-mentioned differences and argued that the disclosure of the TouchMobile system was "general and unspecific" and seemed unwilling to admit that it disclosed any functionality of claim 1.

16. Thus, in principle, it is only necessary to discuss the differences alleged by the respondent. However, the Board judges that it falls within the intention of Article 114(1) EPC that a Technical Board of Appeal, thus a Board having technical competence, must, once

presented with evidence in the form of a document and the core of some argument based upon it, endeavour to make technical sense out of it and thus perform any analysis necessary to reach a technically meaningful decision. In particular, the alleged differences in such an intricately worded claim as claim 1 cannot be meaningfully discussed without an analysis of the features of the claim. Consequently, with the aid of the responses to questions posed to the parties during the oral proceedings, the Board has managed to complete the analysis of claim 1 against an embodiment of E13 as described in E14 (see below) along the lines started by the appellant at point 4.2 of the grounds of appeal and discussed piecemeal at the oral proceedings.

17. As a preliminary point, contrary to the respondent's view, the Board judges that the embodiment of the TouchMobile system, disclosed in E14, in which it is configured to be used by mobile workers in the transportation industry is, in fact, quite specific and is an entirely suitable disclosure for use as the closest prior art for the discussion of the inventive step of the function of the system. In terms of the wording of the function claimed in claim 1 (paraphrased to remove redundant specification of function), this embodiment discloses:

The reading sensor senses commands (page 8, second paragraph) and data (page 2, paragraph 2: the information collected by the mobile workers).

The rewritable storage contains a catalogue of information relating to a plurality of items (page 3, paragraph 2: items on work schedules and/or items of delivery information) from which, by means of said

reading sensor, a user can select one or more items to define said user selections (page 2, third paragraph: entering information such as logs, status or completion times associates the information with items on the schedule and/or items of delivery information and implicitly selects the items, e.g. as a group of items that have been completed).

The controller responds to sensed commands to control said data entry unit (implicit from the nature of commands) and sensed data to select an item from said catalogue for inclusion in said user selections (the user must provide data to select an item).

The display displays a user readable representation of said commands (page 8, second paragraph: function "buttons" for commands) and said stored information for the selected item (data relating to the work schedules and/or delivery information must be displayed so that the worker knows what is to be done and so that items can be selected).

The telecommunications interface telephonically transmits information (implicit from function of modem) relating to said user selections from said storage to a remote processing centre (page 3, lines 1 to 6: data transmitted must relate to items on work schedules and/or items of delivery information so that workloads can be planned) via a telecommunications network (implicit from use of modem) in response to a user operation (page 3, line 2: driver transmits data).

The telecommunications interface also telephonically receives information relating to selectable items as required to update the information in the catalogue stored in said rewritable storage from said remote processing centre via said telecommunications network (paragraph bridging pages 4 and 5: it is implicit from

the fact that the central offices can keep in touch with the mobile workers throughout the day that the mobile unit must be able to receive the unscheduled pickup or customer cancellation information "as required". Such information must both relate to and update new or existing items on the work schedules and/or items of delivery information).

18. The Board therefore judges that the appellant is correct in stating at point 4.3 of the grounds of appeal that claim 1 differs from the function described in E14 only in that the downloading of information from the remote processing centre and updating of the catalogue are responsive to a sensed command.
19. This difference has the effect of initiating the downloading and updating of information from the remote processing centre. The technical problem can therefore be considered to be how to implement the initiation of this downloading and updating of information.
20. The Board judges that the skilled person would certainly look for ways to solve this problem so that the mobile worker could receive any new information, such as the above-mentioned unscheduled pickups or customer cancellations, while en route. This is especially true in the light of the advantage of the system, described at page 2, second paragraph, of being able to "send and receive information from a vehicle, at any time." Thus, the Board does not agree with the respondent that E14 suggests only transferring information overnight.
Furthermore, the skilled person would realise from the nature of the system that in order to receive the

information the terminal must be "docked" in the vehicle docking station attached to a modem. The only possible ways of initiating communication when in the docking station are for the hand held unit to dial the remote centre in the same manner as in steps S6 and S7 of Figure 7 of the patent, described at column 15, lines 16 to 32, or for the remote centre do dial the mobile unit. The Board judges that the former is an obvious alternative, especially since the remote centre would not know when the unit is in the docking station and would otherwise have to dial continuously the mobile unit's number. Moreover, this situation is analogous to the situation before the introduction of the TouchMobile system, described in E16 in the third paragraph of the "Text", in which mobile workers "call the office to give or receive information such as status updates, scheduling changes or service requests."

The Board further judges that it is another obvious possibility to initiate the dialling operation with a user command and, hence, a sensed command, as opposed to some sort of automatic dialling; to avoid excessive connection charges, for example.

21. The Board thus concludes that it would be obvious to initiate communication by a dialling operation in response to a sensed command as claimed in claim 1. The subject-matter of claim 1 of the main request accordingly does not involve an inventive step (Article 56 EPC).

First auxiliary request

22. Claim 1 of the first auxiliary request makes explicit that the command that causes downloading of the information from the remote processing is an "update command, user input by means of said reading sensor".
23. The appellant argued that there was no support for a specific update command, but the respondent considered that it was implicit that the control logic, which caused the downloading and was disclosed in the patent at column 13, lines 45 to 50, must do so in response to such a command.
24. The Board tends to agree with the respondent. However, the Board judges that, in any case, the function is already implicit from the functionality defined in claim 1 of the main request (the downloading updates the information and "in response to a user operation"), so that the amendment cannot add anything inventive to that claim. In response to the Board's questioning in this respect, even the respondent was inclined to agree that the amendment was more of a clarification than a limitation.
25. The subject-matter of claim 1 of the first auxiliary request accordingly does not involve an inventive step (Article 56 EPC).

Second auxiliary request

26. Claim 1 of the second auxiliary request essentially adds the functionality of a telephone to the hand holdable data entry unit.

27. E13 discloses, at page 6, first paragraph, the possibility of connecting a telephone to the docking station, and hence to the system as a whole. The claim therefore further differs from the TouchMobile system in that the telephone functionality is in the hand holdable data entry unit itself. However, the Board agrees with appellant that the effect of these telephone features in the data entry unit has no interaction with the data collection functions. The Board therefore judges that the additional telephone features represent an obvious juxtaposition of a known device functioning in its normal way with the data entry unit and not producing any non-obvious working inter-relationship. In particular, the only possible connection between the two devices is that they may share common hardware components. However, the reuse of common hardware components is an obvious design consideration that cannot contribute to an inventive step.
28. The appellant argued that the incorporation of these additional features in the data entry unit resulted in a particularly effective and successful unit, which was ahead of its time and not suggested in the prior art. However the Board judges that such success stems naturally from the advantages of juxtaposing any separate functionality into a single unit, such as reduced size and cost, and not necessarily from any inventiveness.
29. The subject-matter of claim 1 of the second auxiliary request accordingly does not involve an inventive step (Article 56 EPC).

Third auxiliary request

30. Claim 1 of the third auxiliary request further adds that the telecommunications interface and the data entry unit are integral. The Board judges that the advantages of integrating separate units into a single unit, such as reduced size and cost, are generally well appreciated. Furthermore, as in the case of the addition of the telephone functionality of the second auxiliary request, there is no non-obvious effect arising from integrating these separate units. Consequently the Board agrees with the appellant that it is not inventive to integrate the modem of the TouchMobile system into the data entry unit.

31. The subject-matter of claim 1 of the third auxiliary request accordingly does not involve an inventive step (Article 56 EPC).

Fourth auxiliary request

32. Claim 1 of the fourth auxiliary request essentially changes the claimed object of the third auxiliary request from a data entry system containing a data entry unit to the data entry unit itself, and adds the feature that the telecommunications interface is wireless.

33. The appellant alleges that the first of these amendments extends the scope of protection contrary to Article 123(3) EPC. The Board agrees that in principle an amendment from a data entry system comprising a feature A and a unit B to just the unit B would involve

a deletion of feature A, and thus an extension of scope. However, in the present case the original data entry system did not involve any features (such as feature A, above) other than the data entry unit (unit B, above). Consequently, the Board judges that the amendment has effectively only renamed the system rather than extended its scope.

34. However, the Board judges that since the TouchMobile system was designed to use a wireless network modem (see E13, page 2, penultimate paragraph), this feature does not add anything inventive. Thus the "quantum leap of design evolution" mentioned in the fax from the appellant's representative to the respondent appears to be more a case of marketing hyperbole than evidence of a patentable invention.
35. The subject-matter of claim 1 of the fourth auxiliary request accordingly does not involve an inventive step (Article 56 EPC).
36. There being no other requests, it follows that the appeal must be dismissed.

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

S. Steinbrener