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**Datasheet for the decision  
of 27 February 2015**

**Case Number:** T 0755/09 - 3.5.07

**Application Number:** 01976474.5

**Publication Number:** 1334438

**IPC:** G06F17/00

**Language of the proceedings:** EN

**Title of invention:**

System, apparatus and method for personalising web content

**Applicant:**

Rockstar Consortium US LP  
Davies, Philip  
MacGillivray, Ross  
Bragg, Nigel

**Headword:**

Personalising web content/ROCKSTAR

**Relevant legal provisions:**

EPC Art. 59, 107  
EPC R. 99(1)(a), 101, 139, 151(1)

**Keyword:**

Admissibility of appeal (no)  
Appeal filed on behalf of only one of several joint applicants

**Decisions cited:**

G 0003/99, G 0001/12, R 0018/09, T 0656/98, T 1366/04,  
T 1154/06, T 0012/10

**Catchword:**



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Case Number: T 0755/09 - 3.5.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.07**  
**of 27 February 2015**

**Appellant:**  
(Applicant 1)

Rockstar Consortium US LP  
2201 Lakeside Boulevard  
Suite 1N-110  
Richardson, TX 75082 (US)

**Representative:**

Bewley, Ewan Stuart  
Ipulse  
4 Bloomsbury Place  
London WC1A 2QA (GB)

**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted on 7 November 2008  
refusing European patent application No.  
01976474.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** R. Moufang  
**Members:** M. Rognoni  
R. de Man

## **Summary of Facts and Submissions**

- I. The appeal concerns the decision of the Examining Division to refuse European patent application No. 01976474.5 pursuant to Article 97(2) EPC. The decision was taken in oral proceedings on 7 October 2008; the written reasons were dispatched on 7 November 2008. The applicants at that time were Nortel Networks Limited and three further co-applicants ("joint applicants"). They were represented by the professional representative David Rickard from Ipulse, London.
  
- II. A notice of appeal signed by Mr Rickard was filed on 22 December 2008. It contained the following statement: "The applicant, Nortel Networks Limited of 2351 Boulevard Alfred-Nobel, St Laurent, Quebec H4S 2A9, Canada hereby files an appeal against that decision and requests that the decision be overturned in its entirety and that the application be granted." No mention was made of the other joint applicants. The grounds of appeal referred to the notice of appeal without naming any of the joint applicants.
  
- III. On 28 March 2014 a request was made to record the assignment of 177 patent applications to Rockstar Consortium US LP. The documents submitted in support of this request consisted of copies of a signed "first assignment" from Nortel Networks Limited and several associated companies to Rockstar Bidco, LP, and copies of an unsigned and undated "second assignment" from Rockstar Bidco, LP to Rockstar Consortium US LP. According to a communication from the EPO dated 12 May 2014, which concerned the registration of amendments relating to a transfer (Rule 22 EPC), in the entries pertaining to the applicants of the application in suit the former co-applicant Nortel Networks Limited

- had been replaced by Rockstar Consortium US LP as new co-applicant. The registration of the changes was said to have taken effect on 28 March 2014.
- IV. In response to a corresponding request submitted with letter dated 21 November 2014, a new professional representative replacing the previous one was registered by the EPO with respect to the application in suit.
- V. In a communication accompanying the summons to oral proceedings, the Board noted inter alia that the appeal had been filed in the name of only one of the four co-applicants and that the appeal might be rejected as inadmissible if the appellant's representative did not demonstrate that the notice of appeal had been intended to be filed on behalf of the other co-applicants as well and that their omission had been due to a mistake. The Board also expressed doubts as to whether the evidence submitted so far was sufficient to show that Rockstar Consortium US LP had become one of the co-applicants by transfer.
- VI. By letter dated 28 January 2015, the professional representative informed the Board that the applicants did not wish to attend the scheduled oral hearing in person or be represented at it. They were aware of the significance of not attending and awaited the Board's decision based on the state of the file. The representative's letter did not address in substance the issues raised in the Board's communication.
- VII. On 27 February 2015, oral proceedings took place as scheduled. At the end of the proceedings the chairman pronounced the Board's decision.

## Reasons for the Decision

### *Admissibility of appeal*

1. Pursuant to Article 107, first sentence, EPC, a decision of a department of first instance of the EPO can be appealed only by a party to the proceedings which gave rise to it. If a party consists of a plurality of persons, an appeal against a decision which adversely affects this party has to be filed **on behalf of all these persons** through their duly determined common representative (see G 3/99, OJ EPO 2002, 347, reasons 17, where multiple opponents file a joint opposition; T 1154/06 of 9 December 2008, reasons 1, with respect to joint proprietors of a European patent; see also R 18/09 of 27 September 2010, reasons 5, with respect to joint proprietors and a petition for review).
2. In the present case, the appeal was filed only on behalf of Nortel Networks Limited, i.e. one of several persons who, at the time of filing the appeal, were the joint applicants of the application in suit (see Article 59 EPC). This has the consequence that in principle the appeal has to be held inadmissible in accordance with Rule 101(1) EPC.
3. It has been accepted in the case law of the boards of appeal that where an appeal is filed by only one of several joint members of a party and where this member is not the common representative, the board of appeal should send the common representative a communication giving him the opportunity to fulfil the necessary requirements of the EPC (see G 3/99, reasons 18;

T 1154/06, reasons 1.3). If the common representative does not do so, the notice of appeal is deemed not to have been filed. Such an appeal is thus treated in the same way as an appeal filed but not signed by an authorised person (G 3/99, reasons 20; R 18/09, reasons 7).

4. The present case differs from the situation just described in that the previous professional representative, Mr Rickard, who filed and signed the notice of appeal, was not a non-entitled person but indeed deemed to be authorised to act as the common representative of the joint applicants pursuant to Rule 151(1), second sentence, EPC. Thus, had he filed the appeal on behalf of all the joint applicants, he would clearly have been entitled to do so. However, that is not what he did. As the notice of appeal explicitly indicates, he filed it only on behalf of one of the joint applicants. Thus, the specific legal remedy acknowledged in the case law for situations where the appeal is filed by a co-applicant not entitled to represent the plurality of joint applicants does not apply in the present case.
  
5. The Board is furthermore aware of decisions which have dealt with the situation where a co-proprietor who is the common representative pursuant to Rule 151(1), **first and third sentences**, EPC (or the corresponding provisions of Rule 100(1), first and third sentences, EPC 1973) files a notice of appeal without explicitly mentioning the other co-proprietor(s) as appellant(s) (see T 1366/04 of 16 April 2008, reasons 1; T 12/10 of 16 July 2013, reasons 1). In those cases, the competent boards have come to the conclusion that the appeal was filed by the acting co-proprietor not only for himself

but also, in his capacity as common representative, on behalf of the other co-proprietor(s).

6. The Board has some doubts whether in all cases where a joint member of a party (i.e. a co-applicant, co-proprietor or joint opponent) who is the common representative of all the joint members according to Rule 151(1), **first sentence** (and third sentence), EPC files a notice of appeal without mentioning the other members of the party as appellants, the appeal should be regarded as including the other members as well. However, this issue does not need to be decided: the factual circumstances underlying the cited decisions differ from those of the present case, in which the notice of appeal indicating only one of the joint applicants as appellant was filed by a common representative according to Rule 151(1), **second sentence, EPC, who himself was not one of the joint applicants.**
  
7. In the communication accompanying the summons to oral proceedings, the Board drew the appellant's attention to the fact that the appeal had been filed in the name of only one of the four co-applicants. It warned the appellant that the appeal might therefore be rejected as inadmissible if the appellant's representative did not demonstrate that the notice of appeal had been intended to be filed on behalf of the other co-applicants as well and that their omission had been due to a mistake. The appellant did not respond in substance to this communication. In particular, it did not submit a request for correction under Rule 139 EPC. The Board has noted that the appellant's letter informing that nobody would attend the scheduled oral proceedings uses the term "applicants" twice. Although this may be an indication that the appellant's new



- representative believes that he is acting on behalf of all the joint applicants, it falls short of a procedural statement to the effect that a correction of the notice of appeal is desired.
8. In the Board's view, the present case also does not come under the category calling for a communication under Rule 101(2) EPC inviting the appellant to remedy deficiencies under Rule 99(1) (a) EPC within a specified period. In its decision G 1/12 (OJ EPO 2014, A114), the Enlarged Board of Appeal dealt with the question as to whether when a notice of appeal, in compliance with Rule 99(1) (a) EPC, contains the name and the address of the appellant as provided in Rule 41(2) (c) EPC and **it is alleged that the identification is wrong due to an error**, the true intention having been to file on behalf of the legal person which should have filed the appeal, it is possible to correct this error under Rule 101(2) EPC by a request for substitution by the name of the true appellant. The Enlarged Board answered that question in the affirmative, provided the requirements of Rule 101(1) EPC have been met.
9. In the present case, the notice of appeal was, at least on the face of it, unambiguous: the appeal indicated that it was being filed on behalf of Nortel Networks Limited who, at that time, was one of the joint applicants. The appellant never said that the notice of appeal contained a deficiency under Rule 101(2) EPC. Nor did it react in substance to the Board's communication accompanying the summons. The legal remedy foreseen in Rule 101(2) EPC therefore cannot apply (see also T 656/98, OJ EPO 2003, 385, reasons 7).
10. It follows from the above that the appeal has to be rejected as inadmissible.

*Transfer of status of appellant*

11. Following the request dated 28 March 2014 for recording the assignment of a large number of European patent applications, the EPO registered Rockstar Consortium US LP as co-applicant of the application in suit, replacing Nortel Networks Limited as co-applicant (see above, section III). According to Rule 22(1) EPC the transfer of a European patent application is recorded in the European Patent Register upon production of documents providing evidence of such transfer. In the present case the documents submitted in support of the request consisted of copies of a first assignment from Nortel Networks Limited and several associated companies to Rockstar Bidco, LP and of a second assignment from Rockstar Bidco, LP to Rockstar Consortium US LP.
  
12. In view of the statements made in the request, the Board considers the evidence sufficient to allow the EPO to record Rockstar Consortium US LP as co-applicant for the application in suit, although only the first assignment is dated and signed. The documents submitted show that Nortel Networks Limited has transferred its share of the application and is no longer entitled to be registered as co-applicant. As Rockstar Bidco, LP (the assignee of the first assignment) and Rockstar Consortium US LP (the assignee of the second assignment) are affiliated firms belonging to the same group of companies, it is plausible that the second assignment did indeed take place in the manner indicated by the submitted copy of the (draft) assignment.

13. The replacement of the original appellant (Nortel Networks Limited) by Rockstar Consortium US LP as one of the joint applicants has the consequence that its status as appellant has likewise been validly transferred to Rockstar Consortium US LP with effect from 28 March 2014.

### **Order**

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

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



G. Rauh

R. Moufang

Decision electronically authenticated