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**Datasheet for the decision  
of 23 March 2012**

**Case Number:** T 0663/10 - 3.5.03

**Application Number:** 03765463.9

**Publication Number:** 1532800

**IPC:** H04M 1/24

**Language of the proceedings:** EN

**Title of invention:**

Method and apparatus for telephone line testing

**Applicant:**

AT&T Knowledge Ventures, L.P.

**Headword:**

Telephone line testing/AT&T

**Relevant legal provisions:**

EPC Art. 56, 116

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Inventive step (no)"

"No obligation to hold oral proceedings in the absence of the appellant if the appellant informs the board that it will not attend the oral proceedings"

**Decisions cited:**

T 0910/02, T 1266/07, T 0037/08

**Catchword:**

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Case Number: T 0663/10 - 3.5.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.03  
of 23 March 2012

**Appellant:** AT&T Knowledge Ventures, L.P.  
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**Representative:** Hackney, Nigel John  
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**Decision under appeal:** Decision of the examining division of the  
European Patent Office posted 27 November 2009  
refusing European patent application  
No. 03765463.9 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** A. S. Clelland  
**Members:** F. van der Voort  
R. Menapace

## Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 03765463.9 which was published as international application (PCT/US2003/019919) with publication number WO 2004/010675 A.

The reasons given for the refusal were that claim 1 of each one of a main request and first, third, fourth, sixth and seventh auxiliary requests contained subject-matter which extended beyond the content of the application as filed (Article 123(2) EPC) and that the subject-matter of claim 1 of each one of second, fifth and eighth auxiliary requests did not involve an inventive step (Articles 52(1) and 56 EPC).

II. The following document which was referred to in the decision is relevant to the present decision:

D1: US 2001/0043675 A.

III. In the statement of grounds of appeal the appellant requested that the decision be set aside and a patent be granted on the basis of claims of a main request as filed with the statement of grounds of appeal. Claims of auxiliary requests 1 to 4 were also filed and oral proceedings were conditionally requested. The appellant further requested an opportunity to choose for the oral proceedings to be held by videoconferencing, should oral proceedings be necessary.

IV. The appellant was summoned to oral proceedings. In a communication annexed to the summons to oral proceedings

the board raised, without prejudice to its final decision, objections against claim 1 of all requests under, *inter alia*, Article 52(1) EPC in combination with Article 56 EPC (lack of inventive step). The appellant was also informed that the oral proceedings could not be held by video conference and reasons were given.

V. In response to the board's communication the appellant informed the board that it did not intend to attend the oral proceedings. It was explicitly stated that the request for oral proceedings was not withdrawn. The appellant requested that the merits of the case be considered by the board and a final decision be reached. No substantive comments or amendments in reply to the communication were filed.

VI. In a subsequent communication the board informed the appellant that the oral proceedings were cancelled and that the procedure would be terminated by written decision.

VII. From the appellant's written submissions the board understood the appellant to be requesting that the decision under appeal be set aside and a patent be granted on the basis of the claims of the main request or, in the alternative, on the basis of the claims of one of auxiliary requests 1 to 4, all as filed with the statement of grounds of appeal.

VIII. Claim 1 of the main request reads as follows:

"A hand-held testing apparatus (28) for qualifying a customer telephone line for XDSL services comprising:  
a modem for connecting to said telephone line,

said modem programmed to transmit a plurality of test signals on said telephone line within a frequency range of 0 Hz to 5 MHz, measure a plurality of response signals in response to said plurality of test signals, measure a line voltage between a tip and ring connection associated with said telephone line and generate an output value as a function of said response signals and said line voltage; and

a user interface comprising at least one indicator (102, 104) for communicating said output value to a user, wherein said output value indicates either a line pass or line fail result;

wherein the user interface comprises at least two LEDs (102, 104), one of said LEDs (104) indicating a power status of the apparatus, the other of said LEDs (102) indicating said output value; and

wherein the user interface is adapted to indicate an open circuit result."

Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the following feature is added:

"and wherein the apparatus (28) is configured to be connected to the customer telephone line at a customer premises or at a network central office."

Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the following feature is added:

"and wherein the hand-held testing apparatus (28) is provided with a communication cable for connecting the hand-held testing apparatus to a network interface device at a customer premises and a different type of communication cable for connecting the hand-held testing

apparatus to a main distribution frame or switch location associated with a customer's loop at a network central office."

Claim 1 of auxiliary request 3 differs from claim 1 of auxiliary request 2 in that the penultimate feature is amended to read as follows:

"wherein the user interface is adapted to indicate an open circuit result indicating an insufficient line voltage".

Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 3 in that the following feature is added:

"wherein said apparatus is battery operated and is housed in a container smaller than 7 inches in length by 4 inches in width by 2 inches in depth."

## **Reasons for the Decision**

### 1. *Procedural matters*

- 1.1 In the present case the scheduled oral proceedings would have been public, Article 116(4) EPC. Since there are at present no facilities which would permit the Boards of Appeal to hold public oral proceedings by video conference or indeed an established procedure for holding public oral proceedings by video conference, the appellant's request "for an opportunity ... to choose" that the oral proceedings be held by video conference was rejected (following T 37/08 and T 1266/07, both not published in OJ

EPO). With the summons to attend the oral proceedings the appellant was informed accordingly.

1.2 In response to the board's communication which was annexed to the summons, the appellant informed the board that it did not intend to attend the oral proceedings and requested that the merits of the case be considered by the board and a final decision be reached. The appellant further stated that "For the avoidance of doubt, the expression of this current intention should not be misconstrued as withdrawal of the request for oral proceedings."

1.3 According to Article 116 EPC oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. Oral proceedings serve the purpose of giving a party to the proceedings the opportunity to present its case orally and, if the board considers it appropriate, the purpose of discussing orally any outstanding objections. If a party informs the board that it does not intend to attend the oral proceedings, the board is not obliged to hold oral proceedings in the absence of the party. Rather, under these circumstances and irrespective of whether or not the appellant explicitly maintains its request for oral proceedings, it is within the discretion of the board to decide whether the scheduled oral proceedings are to be maintained or to be cancelled (following T 910/02, Reasons, point 6 (not published in OJ EPO)).

1.4 In the communication accompanying the summons, objections under, *inter alia*, Article 52(1) EPC in

combination with Article 56 EPC were raised in respect of claim 1 of each request on file. Further, the appellant was informed that at the oral proceedings these objections would be discussed. In deciding not to attend the oral proceedings the appellant chose not to make use of the opportunity to comment at the oral proceedings on any of these objections but, instead, chose to rely on the arguments as set out in the statement of grounds of appeal, which the board duly considered below. The board also notes that the appellant did not request that the oral proceedings be postponed. Nor did the appellant file a request for further oral proceedings after being informed that the scheduled oral proceedings were cancelled.

1.5 Under these circumstances holding oral proceedings was considered inappropriate. Hence, the board decided to cancel the oral proceedings and, having considered the merits of the case, was in a position to reach a decision which complied with the requirements of Article 113(1) EPC.

## 2. *Inventive step*

2.1 The examining division considered that D1 represents the most relevant prior art. The board agrees and notes that the appellant did not argue otherwise.

2.2 D1 discloses a testing apparatus for qualifying a customer telephone line for XDSL services (D1, the abstract and paragraphs [0007] and [0011]). The apparatus includes a modem 10 (Fig. 1) for connecting to a telephone line 24, in which the modem is programmed to transmit a plurality of test signals on the telephone



line within a frequency range of 0 Hz to 5 MHz, measure a plurality of response signals in response to the plurality of test signals, measure a line voltage between a tip and ring connection associated with the telephone line and generate an output value as a function of the response signals and the line voltage (paragraph [0019]). The testing apparatus further includes a user interface 48 (Fig. 2), including at least one indicator, i.e. a display (paragraph [0017]), for communicating the output value to a user.

2.3 The subject-matter of claim 1 of the main request differs from the testing apparatus disclosed in D1 in that according to claim 1:

i) the testing apparatus is a hand-held testing apparatus;

ii) the output value indicates either a line pass or line fail result;

iii) the user interface comprises at least two LEDs, one of said LEDs indicating a power status of the apparatus, the other of said LEDs indicating said output value; and

iv) the user interface is adapted to indicate an open circuit result.

2.4 Regarding feature i) the board notes that D1 does not disclose any specific dimensions of the modem 10 and its electrical components (D1, Fig. 2 and paragraphs [0013] to [0016]). However, having regard to the intended use and common manufacturing technologies as were available at the

priority date, a person skilled in the art implementing the modem 10 would have arrived at an embodiment of testing apparatus which is housed in a container having dimensions within the range as specified in claim 1 of auxiliary request 4 (see point VIII above), i.e. an embodiment which can be hand-held. Feature i) does not therefore contribute to an inventive step.

2.5 The above considerations apply, *mutatis mutandis*, to the inclusion of LEDs as defined in feature iii), it being noted that D1 does not provide any details of the display of the interface 48, whilst electronic test instruments having displays including LEDs, e.g. bicolor LEDs, for indicating the test instrument status, power, test results, including pass/fail (cf. feature ii)), etc., were notorious at the priority date. In connection with features ii) and iii), it is also noted that D1 explicitly discloses that, if the line response indicates the presence of a loading coil, then the line is determined as not being suitable for broadband DSL service and the test result is communicated to the user or service provider (paragraph [0023], lines 15 to 18).

2.6 Further, at the priority date it was well-known that an open circuit constitutes a fault in a telephone line, which affects the integrity of a loop transmission system connected to the telephone line (cf., e.g., D1, paragraph [0002]). Since measuring DC voltage and resistance between tip and ring, tip and ground, and ring and ground terminals as disclosed in D1 (paragraph [0019]) encompasses testing for an open circuit (i.e., 0 V and/or infinite resistance), it would have been obvious to a person skilled in the art to include an open circuit test in the wideband loop testing and reporting functions of

the modem 10 of D1 and to indicate to the user the test result indicating an insufficient line voltage by means of the user interface 48 (cf. feature iv)).

2.7 As to the additional features in claim 1 of each one of auxiliary requests 1 to 4 concerning the communication cable (see point VIII above), the board notes that D1 discloses that the testing apparatus is configured to be connected by means of a transmission line 14 to the customer telephone line 24 at a customer premises 12 (D1, paragraphs [0011] and [0018]). It would be obvious to the skilled person that the apparatus would equally be suitable for being connected by means of another cable to a main distribution frame or switch location associated with a customer's loop at a network central office, without any modification of the apparatus being required, namely if the other cable, main distribution frame and/or switch location is/are configured accordingly. As to the specific dimensions of the container as referred to in claim 1 of auxiliary request 4, reference is made to the considerations set out above at point 2.4. These considerations are also pertinent in connection with the additional feature in claim 1 of auxiliary request 4, according to which the hand-held testing apparatus is battery operated.

2.8 The board notes that the appellant did not rebut the considerations concerning inventive step as were set out in the board's first communication and which correspond to the above considerations, i.e. no substantive comments or amendments were filed in reply to the communication.

- 2.9 In view of the above the board concludes that the subject-matter of claim 1 of the main request and each one of the auxiliary requests 1 to 4 does not involve an inventive step (Articles 52(1) and 56 EPC).
3. In view of the foregoing, it has not proved necessary to consider any of the further objections set out in the communication accompanying the summons to oral proceedings.
4. There being no allowable request, it follows that the appeal must be dismissed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

G. Rauh

A. S. Clelland