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**Datasheet for the decision
of 31 March 2015**

Case Number: T 1246/10 - 3.5.04

Application Number: 01997948.3

Publication Number: 1356678

IPC: H04N7/14

Language of the proceedings: EN

Title of invention:

METHOD OF TRANSFERRING DATA OF SCREEN AND VOICE OF MOBILE
PHONE TO A NORMAL ANALOG TELEVISION RECEIVER WITH AN ADAPTER

Patent Proprietor:

Halttunen, Lasse

Opponent:

Nokia Corporation

Headword:

Relevant legal provisions:

EPC Art. 123(2)

RPBA Art. 12(4)

Keyword:

Amendment occasioned by ground for opposition - amendments
allowable (no)

Late-filed request -

submitted with the statement of grounds of appeal

Oral proceedings - change of date (no)

Decisions cited:

G 0002/10, T 1178/08

Catchword:

See section 2.



**Beschwerdekammern
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Chambres de recours**

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Case Number: T 1246/10 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 31 March 2015

Appellant: Halttunen, Lasse
(Patent Proprietor) Kukkakatu 4
04430 Järvenpää (FI)

Respondent: Nokia Corporation
(Opponent) Karakaari 7
02610 Espoo (FI)

Representative: Papula Oy
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 1 April 2010
revoking European patent No. 1356678 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman F. Edlinger
Members: C. Kunzelmann
B. Müller

Summary of Facts and Submissions

- I. The appeal is against the decision of the opposition division to revoke European patent No. 1 356 678 under Article 101(3)(b) of the European Patent Convention (EPC).
- II. The opposition was based on the grounds for opposition under Article 100(a), (b) and (c) EPC. In the proceedings before the opposition division, the patent proprietor filed amended claims according to a main and an auxiliary request and requested that the patent be maintained in amended form. The patent was ultimately revoked on the grounds that, taking into consideration the amendments made by the patent proprietor, claim 1 of both requests did not meet the requirements of Articles 123(2) and 84 EPC, and the subject-matter of claim 1 of both requests did not involve an inventive step (Article 56 EPC).
- III. The patentee appealed against this decision and requested that the decision be set aside. The appellant also requested that the patent be maintained in amended form on the basis of the requests underlying the decision under appeal. In the statement of grounds of appeal, the appellant/patentee gave arguments as to why he considered the decision to be incorrect. The appellant also filed claim 1 according to second and third auxiliary requests.
- IV. Claim 1 of the main request reads as follows:

"A method for transmitting image and sound data from a mobile phone (1) to a television (3), comprising:
copying image and control information from the display to the Bluetooth transmitter and uniting sound

information to them in the mobile phone (1) from the image and sound data received by the mobile phone (1), transmitting the information in a format that conforms to a Bluetooth-protocol as an output signal from the mobile phone (1);
receiving the output signal from the mobile phone (1) as an input signal at a module (2) converting the input signal to RGB-sound signals in the module (2); and transmitting the RGB-sound signals from the module (2) to the television (3),
wherein the module (2) is a mobile telephone accessory located at the television (3),
and wherein by pressing a certain soft key button the phone (1) copies image and control information from the display to the Bluetooth transmitter and uniting sound information to them."

In points V to VII below, the amendments with respect to claim 1 of the main request are set in *italics*.

V. Claim 1 of the first auxiliary request reads as follows:

"A method for transmitting image and sound data from a mobile phone (1) to a television (3), comprising:
copying image and control information from the display to the Bluetooth transmitter and uniting sound information to them in the mobile phone (1) from the image and sound data received by the mobile phone (1), transmitting the *image, control and sound* information in a format that conforms to a Bluetooth-protocol as an output signal from the mobile phone (1);
receiving the output signal from the mobile phone (1) as an input signal at a module (2) converting the input signal to RGB-sound signals in the module (2); and

transmitting the RGB-sound signals from the module (2) to the television (3), wherein the module (2) is a mobile telephone accessory located at the television (3), and wherein by pressing a certain soft key button the phone (1) copies image and control information from the display to the Bluetooth transmitter and uniting sound information to them."

- VI. Claim 1 of the second auxiliary request corresponds to claim 1 of the first auxiliary request, with the method step specifying the transmission of the information reading as follows:

"transmitting the *image and control and sound* information in a format that conforms to a Bluetooth-protocol as an output signal from the mobile phone (1) *provided with a Bluetooth transmitter and transmitting the information by a Bluetooth transceiver;*"

- VII. Claim 1 of the third auxiliary request reads as follows:

"A method for transmitting image and sound data from a mobile phone (1) to *an analog* television (3), comprising:
copying image and control information from the display to the Bluetooth transmitter and uniting sound information to them in the mobile phone (1) from the image and sound data received by the mobile phone (1), transmitting the *image and control and sound* information in a format that conforms to a Bluetooth-protocol as an output signal from the mobile phone (1) *provided with a Bluetooth transmitter and*

transmitting the information by a Bluetooth transceiver;

receiving the output signal from the mobile phone (1) as an input signal at a module (2) converting the input signal to RGB-sound signals in the module (2); and transmitting the RGB-sound signals from the module (2) to the television (3), wherein the module (2) is a mobile telephone accessory located at the television (3), and wherein by pressing a certain soft key button the phone (1) copies image and control information from the display to the Bluetooth transmitter and uniting sound information to them."

- VIII. In a letter of reply dated 5 October 2010 the respondent requested that the appeal be rejected as inadmissible for inadequate reasoning in the statement of grounds of appeal. The respondent also submitted that the second and third auxiliary requests were late-filed. It furthermore submitted *inter alia* that the finding in the decision under appeal concerning Article 123(2) EPC was correct.
- IX. The board issued a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), annexed to a summons to oral proceedings dated 23 September 2014. The date scheduled for oral proceedings was 18 December 2014. In this communication the board set out the reasons for its provisional opinion that the appeal was admissible and that it tended to agree with the finding in the decision under appeal that claim 1 of the main and first auxiliary requests did not meet the requirement of Article 123(2) EPC.

- X. In a letter dated 16 October 2014 the appellant requested postponement of the oral proceedings because of an exacerbation of his serious illness.
- XI. In a letter dated 14 November 2014 the respondent expressed doubts whether the serious illness constituted unforeseen exceptional circumstances but did not object to a postponement of the oral proceedings. The respondent also confirmed that it requested the late-filed second and third auxiliary requests not to be admitted into the appeal proceedings under Article 12(4) RPBA.
- XII. In a communication dated 21 November 2014 the board informed the parties that the oral proceedings had been rescheduled to take place on 31 March 2015.
- XIII. In a letter dated 9 March 2015 the appellant requested a further postponement of the oral proceedings for reasons of his serious illness. The board also received via email attachment a "claim chart" of the appellant representing an analysis of the relevance of Apple TV and Google Chromecast to the present patent family.
- XIV. The board forwarded the letter and the email attachment to the respondent by telefax on 13 March 2015, affording the respondent an opportunity to comment on the appellant's request.
- XV. With a letter of reply dated 16 March 2015 the respondent submitted that it strongly preferred conducting the oral proceedings as scheduled. This was in particular because re-scheduling the oral proceedings would incur additional costs. The opponent had already made travel arrangements to attend the oral proceedings in Munich on 31 March 2015.

- XVI. In a communication dated and sent by telefax on 18 March 2015, the board informed the parties that the oral proceedings would be held as scheduled on 31 March 2015.
- XVII. The day before the oral proceedings the board received two further email attachments comprising the appellant's counterstatements to statements made by the respondent in writing.
- XVIII. Oral proceedings before the board were held on 31 March 2015 in the absence of the appellant, in application of Rule 71(2) EPC 1973 and Article 15(3) RPBA. The respondent was represented. Paper copies of the further email attachments received the day before were handed over to the respondent. The chairman noted that the appellant (patent proprietor) had requested in writing that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the claims of the main request or the first auxiliary request, underlying the decision under appeal, or one of the second and third auxiliary requests filed with the statement of grounds of appeal. The respondent (opponent 1) withdrew its former request that the appeal be rejected as inadmissible and requested that the appeal be dismissed. At the end of the oral proceedings the chairman announced the board's decision.
- XIX. The reasons for the decision under appeal, as far as they are relevant for the present decision, may be summarised as follows:

Claim 1 of the main and the first auxiliary requests referred to "a television". Thus they covered digital

televisions. The application as filed consistently referred to "an ordinary analog home television". There was no support in the application as filed for digital televisions. Furthermore, there was no basis in the application as filed for transmitting information in a format that conforms to a Bluetooth protocol. Thus these claims infringed Article 123(2) EPC.

XX. The appellant's arguments, as far as they are relevant for the present decision, may be summarised as follows:

The television could be any television. There was no need for it to be an analogue television. The invention was defined in a method claim and thus there was no reason to define the television apparatus more specifically as the type of the television apparatus did not affect the method in any way. At the date of filing, in television broadcasting signals were transmitted in analogue form. Thus an ordinary television receiver at home at the priority date would normally have been able to receive analogue television signals. However, the general expression "a television" was used in the description of the application as filed. Also, the figures used the general term "TV" to identify the television. Moreover, it was not clear what strictly speaking was a digital television and what was an analogue television. For instance, the human eye and ear were always operating with analogue signals and therefore no television receiver was operating 100% digitally. Therefore the general term "a television" in claim 1 was correct and based on the application as filed.

XXI. The respondent's arguments, as far as they are relevant for the present decision, may be summarised as follows:

The patent proprietor had been aware of the opposition division's preliminary opinion that the patent should be revoked and thus would have had all reasons to e. g. present the claim sets now filed for the first time as his second and third auxiliary requests. He appeared to consider his appeal as just a convenient way of continuing as if the case still concerned a European patent application pending before the examining division.

The application as filed contained a specific disclosure of an analogue television only, not of a digital television. This was confirmed by the appellant's argument that at the date of filing digital television was not commercially available, or at least was not present in normal users' homes. Wherever the terms "television" or "TV" occurred in the application as filed, they related to immediately preceding expressions with the modifier "analog". Claim 1 of the main and first auxiliary requests were not limited to analogue televisions and therefore contained subject-matter which extended beyond the application as filed, contrary to Article 123(2) EPC. The functioning of the human eye or ear was not relevant for the question of whether the application as filed concerned analogue or digital television.

Reasons for the Decision

1. The appeal is admissible. Since the respondent, in knowledge of the board's reasons in its provisional opinion (see point IX above), withdrew its request that the appeal be rejected as inadmissible (see point XVIII above), the board needs not expand on this point.

2. *The appellant's absence at the oral proceedings*
- 2.1 At the appellant's request, the board postponed the oral proceedings from 18 December 2014 to 31 March 2015, but declined to accept the appellant's request for a further postponement.
- 2.2 Pursuant to Article 15(2) of the Rules of Procedure of the Boards of Appeal (OJ EPO 2007, 536), "A change of date for oral proceedings may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request made as far in advance of the appointed date as possible." The Notice of the Vice-President of Directorate-General 3 of the European Patent Office dated 16 July 2007 concerning oral proceedings before the boards of appeal of the EPO (OJ EPO 2007, Special edition No. 3, 115) also deals with the change of date for oral proceedings. According to point 2 of that Notice, oral proceedings appointed will be cancelled and another date fixed only if the party concerned can advance serious reasons which justify the fixing of a new date. Serious illness is given as an example of serious substantive reasons for requesting a change of date (see point 2.1 of the Notice).
- 2.3 In the present case, the appellant had been represented by professional representatives when the appeal was filed. In a letter dated 1 August 2013 the representatives stated: "We hereby withdraw our appointment as being the representatives... [in the present case]". This withdrawal left the appellant unrepresented.
- 2.4 The board accepted a first postponement of the oral proceedings in view of the exacerbation of the

appellant's serious illness, which it had no reason to cast doubt on, and the fact that the respondent did not object to a postponement (see points X to XII above). The oral proceedings scheduled for 18 December 2014 were thus postponed to 31 March 2015.

- 2.5 However, the board was unable to grant the second request for postponing oral proceedings filed less than one month before the scheduled date (see point XIII above). The respondent had already made travel arrangements for the oral proceedings and opposed any postponement thereof. Furthermore, the board had no indication that a further postponement for a few months could change the appellant's personal health situation. In addition, the appellant had already enjoyed the benefit of a postponement of the oral proceedings. The appellant should, in these circumstances, have appointed a representative if he could not attend the oral proceedings himself. In the light of the foregoing, the board did not grant the appellant's request for a further postponement of the oral proceedings.

3. *Main and first auxiliary requests:*

added subject-matter (Article 123(2) EPC)

- 3.1 According to Article 123(2) EPC, the European patent "may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed".
- 3.2 It is established case law that this means that any amendment to a European patent can only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the

date of filing, from the whole of the documents relating to the disclosure (the description, claims and drawings) as filed (see, for instance, the decision of the Enlarged Board of Appeal G 2/10, point 4.3 of the reasons).

3.3 Claim 1 of the main and first auxiliary requests specify a method for transmitting image and sound data from a mobile phone to a television. It is uncontested that the expression "television" encompasses analogue and digital televisions, and claim 4 of the patent specification confirms that only particular embodiments are concerned with analogue televisions. Thus with the claimed method image and sound data may be transmitted from a mobile phone to analogue or digital televisions.

3.4 The application as filed gives the consistent teaching of providing a link between a mobile phone with a standard Bluetooth accessory and an ordinary analogue television receiver, making use of USB-signal conversion between a digital mobile phone and analogue signals (in particular those used in a SCART connector; see application as filed, page 1, line 31 to page 2, line 18; page 2, lines 29 to 31; page 3, line 17 to page 4, line 3; claim 1 and figures 1 and 2). More specifically, in claim 1 and on page 1, the application as originally filed consistently refers to an "ordinary analog television" or "ordinary analog home television" (see lines 5, 28 and 31 and 32). When read in the context of the application as a whole, the expressions "TV" and "television" used in the remainder of the description and the drawings have the meaning of a television of the kind defined in the introductory part of the application, i. e. an ordinary analogue (home) television. Also, the statement of the problem that the invention addresses and the corresponding

object of the invention (page 1, lines 16 to 29 of the application as filed) make it clear that the method of the invention transmits image data from a mobile phone to a low-cost ordinary home television, as opposed to expensive monitors which are only suitable for a work environment.

- 3.5 Thus, a person skilled in the art would have been informed by the generalisation from analogue television to television in the claims that the invention may be carried out with **any** television, including digital television. This is not directly and unambiguously derivable from the application as filed.
- 3.6 The appellant's argument that the expressions "TV" and "television" are present in the application as filed take these expressions out of their context (see point 2.4. above).
- 3.7 The appellant's argument that the invention is defined in method steps does not take into consideration that the method steps are originally only disclosed in a context which comprises a mobile phone and an analogue television.
- 3.8 Moreover, it is uncontested that at the date of filing analogue television was commercially common, whereas digital television was not (yet). Thus a person skilled in the art would have understood the repeated references to an "ordinary analog television" in the application as filed to refer to a commercially common analogue television. This is corroborated by the fact that there is no technical teaching in the application as filed which might be specifically related to a (then uncommon) digital television.

3.9 The application as filed also comprises a reference to an (implicitly digital) PC, but the invention is not concerned with a PC monitor (see page 3, lines 1 to 3).

3.10 In view of the above, the board finds that claim 1 of the main and first auxiliary requests contain subject-matter which extends beyond the content of the application as filed. Hence, these claims infringe Article 123(2) EPC.

4. *Second and third auxiliary requests:
admissibility (Article 12(4) RPBA)*

4.1 According to Article 12(4) RPBA, the boards have the power "to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings" (in relation to the particular case that requests are submitted with the statement of grounds of appeal, see, for instance, T 1178/08, section 2 of the reasons).

4.2 Claim 1 of the second and third auxiliary requests has been amended (with respect to claim 1 of the first auxiliary request) by specifying that the mobile phone is provided with a Bluetooth transmitter and specifying a step of transmitting the information by a Bluetooth transceiver.

4.3 In his written submissions, the appellant did not indicate any reasons for not submitting the second auxiliary request until the appeal proceedings. These amendments may have been intended to more clearly define what the application disclosed in respect of Bluetooth. Anyway, these amendments do not address the generalisation from analogue television to television in general. Claim 1 of the second auxiliary request

would thus be objectionable in the same way as claim 1 of the main request and first auxiliary request.

- 4.4 While claim 1 of the third auxiliary request additionally specifies the television as an "analog television", the appellant has not advanced any reason why this or a similar amendment was not made in the first-instance proceedings although this particular objection had been present from the beginning of the opposition proceedings.
- 4.5 Moreover, claim 1 of the second and third auxiliary requests raise new issues which are not considered in the decision under appeal, such as claim construction issues relating to the relationship between "the Bluetooth transmitter", "a Bluetooth transmitter" and "a Bluetooth transceiver".
- 4.6 At the oral proceedings before the board, the appellant was absent and thus could be treated as relying only on his written case (see Article 15(3) RPBA).
- 4.7 In view of the above, the board decided to exercise its discretion under Article 12(4) RPBA in not admitting claim 1 of the second and third auxiliary requests into the appeal proceedings.
5. *The appellant's emails and email attachments*
- 5.1 The appellant's first email essentially only comprises his request for a further postponement of the oral proceedings. The attachment "claim chart" represents an analysis of the relevance of Apple TV and Google Chromecast to the present patent family. This analysis has no relevance for the issues decided by the board (see sections 3 and 4 above).

- 5.2 The appellant's second email is essentially a cover email for the further email attachments. The counterstatements comprised in these further email attachments do not relate to the added subject-matter issue being decided on by the board (see section 3 above). Nor do they relate to the issue of the admissibility of the second and third auxiliary requests. They concern substantive and clarity issues only, and cover indiscriminately all the appellant's requests. In particular, they mainly concern issues related to the expression "information in a format that conforms to a Bluetooth protocol" and the relationship between "the display" and other features of the claim. Thus these counterstatements have no relevance for the issues being decided upon by the board.
- 5.3 Under these circumstances it may be left open whether the emails, the "claim chart" attachment and the further attachments could have been admitted into the appeal proceedings despite their electronic form.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

F. Edlinger

Decision electronically authenticated