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**Datasheet for the decision
of 17 March 2014**

Case Number: T 2244/12 - 3.5.05

Application Number: 08012136.1

Publication Number: 1973260

IPC: H04L1/16, H04L1/18

Language of the proceedings: EN

Title of invention:

Enhanced polling method for preventing deadlock in a wireless communications system

Patent Proprietor:

Innovative Sonic Limited

Opponent:

Telefonaktiebolaget L M Ericsson (publ)

Headword:

Enhanced polling method/INNOVATIVE SONIC LIMITED

Relevant legal provisions:

EPC R. 152(6)

Decision of the President of the EPO dated 12 July 2007

Keyword:

Authorisation - filing of authorisation
Admissibility of appeal - (no)

Decisions cited:

T 0323/87

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 2244/12 - 3.5.05

**D E C I S I O N
of Technical Board of Appeal 3.5.05
of 17 March 2014**

Appellant:
(Patent Proprietor)

Innovative Sonic Limited
P.O. Box 957
Offshore Incorporations Centre
Road Town
Tortola (VG)

Representative:

Görz, Ingo
Hoefer & Partner
Patentanwälte
Pilgersheimer Strasse 20
81543 München (DE)

Respondent:
(Opponent)

Telefonaktiebolaget L M Ericsson (publ)
164 83 Stockholm (SE)

Representative:

HOFFMANN EITLE
Patent- und Rechtsanwälte
Arabellastrasse 4
81925 München (DE)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 10 August 2012
revoking European patent No. 1973260 pursuant to
Article 101(2) EPC.**

Composition of the Board:

Chair: A. Ritzka
Members: P. Corcoran
F. Blumer

Summary of Facts and Submissions

- I. The present appeal relates to the decision of the opposition division to revoke European patent no. 1 973 260 B pursuant to Article 101(2) EPC. The impugned decision was announced during oral proceedings before the opposition division on 29 June 2012 and the written reasons were dispatched on 10 August 2012.
- II. With a letter dated 19 October 2012 which was received at the EPO on the same date, Mr. Görz, a professional representative from the firm of Hoefer & Partner, gave notice that an appeal was being lodged in the name of and on behalf of:

Innovative Sonic Limited
P.O. Box 957
offshore incorporations centre
Road Town, Tortola
BRITISH VIRGIN ISLANDS.
- III. A written statement setting out the grounds of appeal was received at the EPO on 19 December 2012.
- IV. In response to the written statement setting out the grounds of appeal, the respondent (Opponent) submitted a letter of reply dated 14 May 2013 in which it requested that the appeal be dismissed. The respondent challenged the admissibility of the appeal and made further submissions to the effect that, if found admissible, the appeal should not be allowed.
- V. Concerning the question of admissibility, the respondent submitted *inter alia* that the appeal should be rejected as inadmissible under Article 107 EPC in conjunction with Rule 101(1) EPC due to the notice of appeal having been filed by a company which had ceased

to exist at the time the appeal was filed (cf. letter dated 14 May 2013: item 1.5). In this regard the respondent submitted that at the time of filing of the appeal, the company in whose name the notice of appeal was filed, *viz.* Innovative Sonic Limited incorporated under the laws of the British Virgin Islands, had been discontinued and replaced by a separate and distinct company of the same name incorporated under the laws of a different jurisdiction, *viz.* Mauritius.

VI. According to the respondent, the discontinuation of Innovative Sonic Ltd. incorporated under the laws of the British Virgin Islands and its continuation in the form of a company incorporated under the laws of another jurisdiction represented more than a mere change of address. While being prepared to accept that the company Innovative Sonic Limited incorporated under the laws of Mauritius might enjoy the status of a successor in title to the discontinued company, the respondent submitted that the rights and obligations of any such successor company with respect to the contested patent were unclear.

VII. On 26 July 2013, the board issued a communication accompanying a summons to oral proceedings scheduled to take place on 26 November 2013 in which it referred *inter alia* to the respondent's submissions that the appeal should be rejected as inadmissible due to the notice of appeal having been filed by a company which had ceased to exist at the time of filing of the appeal. The board indicated that the issues raised by the respondent in this regard appeared to require further discussion during oral proceedings.

VIII. In its communication the board requested the appellant to assist in clarifying the circumstances surrounding

discontinuation of the company in whose name the notice of appeal had been filed, viz. Innovative Sonic Limited incorporated under the laws of the British Virgin Islands. The board noted that if the appeal were being pursued by a successor company, then it would appear necessary for the appellant to provide evidence of the entitlement of any such successor company to pursue the appeal.

- IX. The board further noted that when filing the notice of appeal and the statement setting out the grounds of appeal, the representative purporting to act on behalf of the appellant appeared to have acted on behalf of a company which had ceased to exist. In consequence of this, his authorisation to act on behalf of that company could not have been valid any more. Thus, it was unclear on whose behalf the representative was actually acting or, indeed, whether he was representing any duly entitled party to the proceedings at all.
- X. Due to the particular circumstances of the case, the representative purporting to act on behalf of the appellant was requested to file an authorisation in accordance with Article 1(3) of the Decision of the President of the EPO dated 12 July 2007 on the filing of authorisations (OJ EPO, Special edition 3/2007, 128) within two months after receipt of the board's communication. Said representative was further advised that if the authorisation was not filed in due time, any procedural steps taken by him would be deemed not to have been taken (cf. Rule 152(6) EPC).
- XI. In response to its communication, the board received a letter dated 23 October 2013 signed by Mr. Benedikt, a professional representative at the firm of Hoefer & Partner, which declared "The Applicant herewith

withdraws the appeal ...". Notwithstanding the request in the board's communication to file an authorisation, no authorisation was filed either with the letter dated 23 October 2013 or independently thereof.

- XII. The board further received a letter dated 24 October 2013 from the representative of the respondent, in which it was noted that the representative purporting to act on behalf of the appellant did not appear to have filed an authorisation in due time. Accordingly, the respondent requested "that the appeal be deemed never to have been filed as a legal consequence of Rule 152(6) EPC".
- XIII. With a further communication issued on 8 November 2013, the board informed both representatives that the oral proceedings appointed for 26 November 2013 were cancelled. In said communication, the board noted *inter alia* that it appeared from the file that no authorisation had been filed by the appellant within the time limit laid down in its earlier communication as a consequence of which the provisions of Rule 152(6) EPC would apply and the appeal should be deemed not to have been filed.

Reasons for the Decision

1. According to the letter dated 19 October 2012, the appeal was lodged in the name of and on behalf of a company called "Innovative Sonic Limited" with an address in the British Virgin Islands (cf. Facts and Submissions, item II. above).
2. The respondent has submitted that at the time of filing of the appeal, the company which was the original

- applicant and in whose name the notice of appeal was apparently filed, viz. Innovative Sonic Ltd. incorporated under the laws of the British Virgin Islands, had been discontinued and had been replaced by a separate and distinct company of the same name incorporated under the laws of a different jurisdiction, viz. Mauritius, (cf. Facts and Submissions, item V. above).
3. The appellant was requested to assist in clarifying the circumstances surrounding the discontinuation of the company Innovative Sonic Ltd. incorporated under the laws of the British Virgin Islands and was further advised that if the appeal were being pursued by a successor company to the original applicant, it would be necessary to provide evidence of the entitlement of any such successor company to pursue the appeal (cf. Facts and Submissions, item VIII. above).
 4. The letter dated 23 October 2013 from a professional representative at the firm of Hoefer & Partner did not make any attempt to address the issues raised by the board concerning the identity of the appellant and its entitlement to pursue the appeal but merely declared "The Applicant herewith withdraws the appeal ..." (cf. Facts and Submissions, item XI. above).
 5. As no authorisation has been filed by the representative purporting to act on behalf of the appellant, the question as to whether said representative was in fact authorised to act on behalf of a duly entitled party to the proceedings when the notice of appeal was filed remains unresolved.
 6. In view of the foregoing and having particular regard to the fact that the representative purporting to act

on behalf of the appellant did not file an authorisation in due time as requested, it follows that the notice of appeal, and therefore the appeal itself is deemed not to have been filed (cf. Rule 152(6) EPC). Consequently, the appeal did not come into existence and the appeal fee must be refunded (cf. T 0323/87, OJ EPO 1989, 343).

Order

For these reasons it is decided that:

1. The appeal is deemed not to have been filed.
2. Reimbursement of the appeal fee is ordered.

The Registrar:

The Chair:



K. Götz

A. Ritzka

Decision electronically authenticated