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**Datasheet for the decision
of 4 September 2020**

Case Number: T 0681/16 - 3.5.03

Application Number: 11290161.6

Publication Number: 2506442

IPC: H04B1/04, H03G3/30, H04B1/18

Language of the proceedings: EN

Title of invention:
Radio head device and method of operating a radio head device

Patent Proprietor:
Alcatel Lucent

Opponent:
Kathrein-Werke KG

Headword:
Radio head device/ALCATEL

Relevant legal provisions:
EPC Art. 123(2)
EPC R. 103(1) (a)
RPBA 2020 Art. 12(8)

Keyword:

Decision in written proceedings - (yes): no request for oral proceedings

Added subject-matter - (yes)

Reimbursement of the appeal fee - (no): no substantiation

Decisions cited:

T 0003/90



Beschwerdekammern

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Case Number: T 0681/16 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 4 September 2020

Appellant:

(Opponent)

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 January 2016 concerning maintenance of the
European Patent No. 2506442 in amended form.**

Composition of the Board:

Chair

K. Bengi-Akyürek

Members:

T. Snell

R. Winkelhofer

Summary of Facts and Submissions

- I. This case concerns the appeal of the opponent (henceforth, "appellant") against the interlocutory decision of the opposition division concerning the maintenance of the present patent in amended form. The opposition division held, inter alia, that claim 1 of the main request complied with Article 123(2) EPC and that its subject-matter was both new and inventive having regard to prior-art document E5:

E5 = EP 1 202 448 B1.
- II. The appellant requests that the decision under appeal be set aside and that the patent be revoked, as well as "reimbursement of the appeal fees".
- III. The patent proprietor (henceforth, "respondent") requests that the patent "be maintained in amended form in accordance with the main request submitted in the Opposition procedure", i.e. that the appeal be dismissed.
- IV. The appellant indicated in its submission dated 6 August 2020 (in response to the board's communication under Article 15(1) RPBA 2020) that they did "not intend to attend the Oral Proceedings on 15 September 2020" and that they "await the decision of the Opposition Division [*sic*] based on the arguments already made". The respondent did not respond to the board's communication and did not request any oral proceedings.
- V. Oral proceedings were then cancelled.

VI. Claim 1 of the **main request** (being identical to claim 1 as granted) reads as follows (feature labelling (a) to (g) added by the board):

"(a) Radio head device (100), for receiving an input signal from an external signal processing unit (12) and for providing a radio frequency, RF, output signal (RF_out) which depends on said input signal, wherein said radio head device (100) comprises:

(b) - an input interface (110) that is configured to receive a digitally modulated input signal (Di) from said external signal processing unit (12),

(c) - digital to analog, D/A, reconstruction means (120) configured to transform said digitally modulated input signal (Di, Di') into an analog input signal (Ai), and

(d) - amplifier means (130) configured to amplify said analog input signal (Ai)

(e) depending on an amplification and/or attenuation applied to a signal (siq) said input signal (Di) from the external processing unit (12) is derived from,

(f) wherein said amplifier means (130) are configured to apply a variable gain and/or attenuation to the analog input signal (Ai) to be amplified,

(g) - wherein said amplifier means (130) are configured to be controlled by said external signal processing unit (12)."

Reasons for the Decision

1. Procedural matters

According to the established jurisprudence of the Boards of Appeal, the indication of a party's intention not to attend the scheduled oral proceedings before the board is considered equivalent to a withdrawal of the request for oral proceedings (see e.g. T 3/90, OJ 1992, 737, Reasons, point 1).

As there are no outstanding requests for oral proceedings (see point IV above), the board is in a position to decide upon the present case without holding oral proceedings. Accordingly, this decision can be handed down in writing (cf. Article 12(8) RPBA 2020).

2. Main request - claim 1 - Article 123(2) EPC

2.1 Feature (g) of claim 1, which was added to claim 1 during the examination proceedings, is not directly and unambiguously derivable from the application as filed, contrary to Article 123(2) EPC.

2.2 The most general disclosure of this feature in the present application as filed appears to be in paragraph [0018] of the description (referring to the published application) which reads as follows:

"According to a further preferred embodiment, said signal processing unit is configured to control a gain factor and/or attenuation of amplifier means which are arranged within said radio head device and which are configured to apply a variable gain

and/or attenuation to an analog signal that is processed within said radio head device."

- 2.3 It follows that the control by the signal processing unit is originally disclosed only in connection with *controlling the gain factor and/or attenuation of the amplifier*. Claim 1 is however not limited to controlling the amplifier only in this sense, but embraces controlling other characteristics of the amplifier, e.g. the frequency characteristics.
- 2.4 In the impugned decision, the opposition division referred to page 20, first paragraph of the description as filed (corresponding to paragraph [0058] of the published application) as being a sufficient basis. However, this disclosure is even more limited than paragraph [0018].
- 2.5 Hence, claim 1 does not comply with Article 123(2) EPC.
- 2.6 For this reason alone, the opposed patent cannot stand. Thus, there is no need to discuss further questions of patentability.

3. *Request for reimbursement of the appeal fee*

In the notice of appeal, the appellant requests "reimbursement of the appeal fees". However, no substantive reasons have been submitted in support of the request, and such reasons can also not be found. This request therefore has to be refused.

4. *Conclusion*

As the main request, which is the only claim request pursued by the respondent, is not allowable, the patent

must be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.
3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated