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**Datasheet for the decision
of 4 February 2022**

Case Number: T 0999/16 - 3.5.03

Application Number: 06019997.3

Publication Number: 1768268

IPC: H04B1/38, H04M1/725, G01F15/06,
G08C17/02

Language of the proceedings: EN

Title of invention:

Module for wireless communication with central processor unit

Applicant:

IQRF Tech s.r.o.

Headword:

Wireless communication platform/IQRF

Relevant legal provisions:

EPC Art. 56, 84, 113(1), 116(1)
EPC R. 115(2)
RPBA 2020 Art. 15(2), 15(3), 15a(1)

Keyword:

Postponement of oral proceedings for a fourth time - (no)
Clarity - (no)
Inventive step - (no)

Decisions cited:

T 0641/00, T 1246/10, T 0447/13



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Case Number: T 0999/16 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 4 February 2022

Appellant: IQRF Tech s.r.o.
(Applicant) Prumyslova 1275
506 01 Jicin (CZ)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 10 November 2015 refusing European patent application No. 06019997.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair K. Bengi-Akyürek
Members: J. Eraso Helguera
E. Mille

Summary of Facts and Submissions

I. The appeal was lodged by the applicant against the decision of the examining division to refuse the present European patent application for lack of inventive step (Article 56 EPC) with respect to the claims of a main (and sole) request, having regard to the following prior-art document:

D1: US 2003/0204560 A1.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of that **main request**. No oral proceedings were requested.

II. By letter dated 30 January 2020, the appellant's then representative informed the board that he would no longer represent the appellant and that the "applicant will contact you with the details of his new representative". No new representative was appointed.

III. The board summoned to oral proceedings to be held on 6 November 2020 and attached a negative preliminary opinion on the merits of the case, which included objections under Articles 84 and 56 EPC. No reply to the substantive aspects of that opinion was filed at any time.

IV. By letter dated 4 November 2020, received by telefax, the CEO of the appellant and the designated inventor of the present invention, Mr Sulc, requested the board to postpone the oral proceedings scheduled for 6 November 2020, preferably to a date at the beginning of 2021, due to the COVID-19 restrictions for accessing the EPO

premises then in place. In response to a corresponding proposal by the board, the appellant refused to hold the scheduled oral proceedings by videoconference.

- V. The board granted this and two subsequent requests for postponement submitted by Mr Sulc on the grounds of a serious illness. The original dates fixed for oral proceedings were changed to the new dates 8 November 2021, 8 December 2021 and finally 4 February 2022 (in response to Mr Sulc's request for postponement dated 9 November 2021 "from 8.12.2021 to another date, most suitable would be beginning of 2022").
- VI. The board in a new composition (following the retirement of the former rapporteur of the appeal case) summoned again to oral proceedings for 4 February 2022 to be held by videoconference under Article 15a RPBA. It also informed the appellant with an annexed communication dated 10 December 2021 that, in view of Mr Sulc's ongoing health problems, it now expected that a professional representative would be appointed if the appellant did not withdraw its request for postponement of the oral proceedings and again could not attend them.
- VII. By email dated 4 January 2022, received by post on 10 January 2022, Mr Sulc requested yet another postponement of the oral proceedings "to April 2022 at the earliest", invoking again his medical condition which would prevent him from attending those oral proceedings and the alleged impossibility for him, due to this medical condition, to appoint a professional representative. Further, it was stated that he would "still prefer oral proceedings in Haar instead of proceedings held by videoconference". A medical

certificate was appended.

- VIII. With a communication dated 18 January 2022, the board informed the appellant that the evidence provided did not justify a fourth postponement of the oral proceedings and that these proceedings, if still requested, would take place on 4 February 2022 by videoconference.
- IX. By email dated 2 February 2022, received by post on 8 February 2022, Mr Sulc requested again a postponement of the oral proceedings "to April 2022 at the earliest", still invoking his medical condition. An updated medical certificate was appended.
- X. With a communication dated 8 February 2022 (sent in advance by email to the appellant on 3 February 2022), the board stated that there was no evidence on file that Mr Sulc's medical condition prevented him from attending the oral proceedings, since the last medical certificate provided for him merely confirmed that he was on long-term sick leave until 31 January 2021. The board stated that, in his position as the appellant's CEO, Mr Sulc should have appointed a professional representative for attending those oral proceedings in his stead if he considered that he could not attend them himself. Hence, no reasons for yet another postponement of the scheduled oral proceedings were present and the date for the oral proceedings was therefore maintained.
- XI. Oral proceedings before the board were held on 4 February 2022 by videoconference *in absentia*. Before the official start of the hearing, the board verified that the appellant was duly summoned to those oral proceedings and that the videoconference link for

attending them was properly sent to the appellant. The board reconsidered the request for postponement of the oral proceedings and came to the conclusion that the requested postponement was to be refused.

At the end of the oral proceedings, the board's decision was announced.

XII. Claim 1 of the **main request** reads as follows:

"A method of creating a generic *wireless communication platform for user applications* in an area of wireless communication *in high frequency bands at least in the range of 300 MHz to 2.60 GHz, particularly for home and office automation systems, utilizing a module*, wherein the *module* comprises a block (RF) for wireless communication, connected to an antenna interface (ANT) and a power supply interface (Uin) and also to a control block (RFCON), the module further includes a control unit (MCU) comprising a central processor unit (CPU), a *first memory unit* (MOS) with the *operating system control code* to ensure the function of wireless communication and a *second memory unit* (MAP) for storing or starting up a user-defined application control code, where the control unit (MCU) is connected to the control block (RFCON), to the communication interface (COM) of the module and to the power supply interface (Uin), **characterized in that** the method comprises *adding* a control code for an operating programming mode of the *module* to the *first memory unit* (MOS) of the *module*, dedicating the input and output terminals I/O of the control unit (MCU) to *respective operations to be performed, the addresses and the method of selecting the individual services of the operating system are published whilst for uploading an application control code in the second memory*

unit (MAP) for storing or starting up a user-defined application control code, the communication interface (COM) of the module is used to allow the control code for the first memory unit (MOS) and the application control code for the second memory unit (MAP) be developed and stored separately."

Reasons for the Decision

1. *Request for postponement of the oral proceedings*
 - 1.1 Pursuant to Article 15(2) RPBA, a request of a party for a change of the date fixed for oral proceedings **may** be allowed if the party has put forward serious reasons which justify the fixing of a new date. The request shall be filed in writing, reasoned and, where appropriate, supported by documentary evidence and it should include a list of dates on which the requesting party is not available for oral proceedings. Reasons which **may** justify a change of the date for oral proceedings include "serious illness" (cf. Article 15(2) (b) (ii) RPBA).
 - 1.2 According to the definition provided in T 447/13 (Reasons 5.3), "serious illness" means an illness which is sufficiently serious to prevent the party's representative *travelling* to oral proceedings and satisfactorily *presenting* the case on the appointed day. Of course, as in the present case, if the oral proceedings are held by videoconference pursuant to Article 15a(1) RPBA, the "travelling" aspect becomes obsolete.
 - 1.3 Furthermore, although no person shall be compelled to be represented by a professional representative in

proceedings before the EPO (cf. Article 133(1) EPC), the board follows the conclusions drawn in T 1246/10 (Reasons 2.5), that a party may, in circumstances where a person who is not a professional representative has ongoing health problems, be expected to appoint a professional representative if this person could not attend the arranged oral proceedings themselves.

1.4 In the present case, the appellant had been represented by a professional representative when the appeal was filed. However, in a letter dated 30 January 2020, the representative stated that he would no longer represent the appellant and that the appellant would contact the board for providing the details of the appellant's new representative (cf. point II above). This withdrawal left the appellant unrepresented henceforth.

1.5 By the board's communication dated 12 November 2021, the board informed the appellant why it was not in a position to accede to its request for postponement. The communication included the following text (including original emphasis):

"1. The board is unable to agree to a *further* postponement of the oral proceedings scheduled for 8 December 2021, which would be the *third* postponement in this case.

2. If Mr Sulc is unlikely to be well enough to attend the oral proceedings in a month's time, there is no way of knowing whether a postponement to early 2022 as requested would result in a change of Mr Sulc's health situation. In such circumstances, it can be expected that a **professional representative** would be appointed if the appellant cannot attend the proceedings (cf.

T 1246/10, Reasons 2.5).

3. With respect to the appellant's request to hold oral proceedings in-person, the board notes that in accordance with G 1/21, it has the power to appoint oral proceedings via videoconference during an emergency such as the Covid-19 pandemic even without the consent of the appellant (cf. **Article 15a RPBA**). The Order of G 1/21 reads as follows:

During a general emergency impairing the parties' possibilities to attend in-person oral proceedings at the EPO premises, the conduct of oral proceedings before the boards of appeal in the form of a videoconference is compatible with the EPC even if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference.

Noting the current very high incidence of Covid-19 in Bavaria, the board maintains the form of the oral proceedings as a videoconference."

1.6 The last one of the numerous requests for postponement of the oral proceedings on the grounds of serious illness, sent by email and received officially at the EPO only on 8 February 2022 (i.e. four days after the arranged oral proceedings), includes the following wording:

"Dr. Sulc is on the sick leave from 25th October 2021 constantly. Please see the confirmation of the duration of incapacity for work in the attachment

(this confirmation is always issued at the beginning of the next month). The health problems do not allow him to prepare for the proceedings. Based on that we would like to ask you to reschedule the proceedings from 4th February 2022 to April 2022 at the earliest."

- 1.7 As with the previous requests for postponement, also this request was filed in advance by email and then received by post at the EPO much later - despite the fact that the Registrar of the board indicated on several occasions that "email has no legal force in written proceedings under the EPC and thus cannot be used to validly perform any procedural act and in particular cannot be used to comply with the time limits". In addition, the annexed medical certificate relating to Mr Sulc's "incapacity for work", like the previously provided certificates, were issued in the Czech language (without any translation provided) and they did not cover the actual date of the arranged oral proceedings (i.e. indicating 31 January 2022 as the incapacity duration's end date associated with Mr Sulc's long-term sickness, although the oral proceedings were scheduled for 4 February 2022). And again, no professional representative had been appointed, despite the board's many requests in its communications (cf. points X and 1.5 above).

In that regard, there was no sufficient evidence on file that the medical condition of Mr Sulc would have prevented him from appointing a professional representative if he considered that he was not able to attend the arranged oral proceedings himself, even in the form of a videoconference. Rather, Mr Sulc, in his responses by email, persistently complained - making use of a somewhat emotive and derogatory language -

about the unwillingness of the board to grant his requests for postponement (e.g. "EPO's discrimination not enabling a fair trial and appeal", "I am not able to join personally meeting chaotically organized/postponed/moved forward by EPO few times, nor to delegate the case and transfer all information needed, we logically feel discriminated by EPO", etc.).

- 1.8 Given that none of the medical certificates on file, including the last one provided, constitute sufficient evidence that Mr Sulc was indeed prevented from attending and presenting his case on the appointed day and given that no professional representative had been appointed *before* or *after* the start date of Mr Sulc's "duration of incapacity for work", i.e. 25 October 2021, the board was unable to accede to his request for yet another postponement of the arranged oral proceedings. In particular, no guarantee could be provided that such postponement "to April 2022 at the earliest" as requested (see point 1.6 above) would indeed result in a positive change of Mr Sulc's health situation.

In addition, no convincing arguments were advanced as to the conduct of the scheduled oral proceedings in person. It was simply said that Mr Sulc preferred a physical hearing. The board, in exercising its discretion under Article 15a(1) RPBA, reconsidered the issue of the format of the arranged hearing by taking into account criteria such as the complexity of the case, whether simultaneous interpretation would be needed and in particular the current pandemic situation, and maintained its discretionary decision to hold those oral proceedings by videoconference.

1.9 In the light of the foregoing and considering the duty of a public authority such as the EPO and in particular the Boards of Appeal to strike a fair balance between the legitimate interests of a party and those of third parties and the public as regards legal certainty, the board did not grant the appellant's request for a further postponement of the oral proceedings.

2. *Right to be heard (Article 113(1) EPC)*

2.1 Article 116(1) EPC stipulates that oral proceedings before an organ of the EPO shall take place either at the instance of the EPO if it considers this to be expedient or at the request of any party to the proceedings. Furthermore, pursuant to Rule 115(2) EPC, if a party duly summoned to oral proceedings before the EPO does not appear as summoned, the proceedings may continue *without* that party. Lastly, as to oral proceedings before the Boards of Appeal, Article 15(3) RPBA states that a board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of a party duly summoned who may then be treated as relying only on its written case.

2.2 In the present case, the appellant itself had never requested oral proceedings as an auxiliary measure. It was the board who, of its own motion, summoned to such oral proceedings for the first time on 17 April 2020, pursuant to Article 116(1) EPC.

2.3 The board notes that the appellant, if it had so wished, could at any time have made written submissions in reply to the board's preliminary opinion initially sent on 17 April 2020, i.e. almost two years before the present oral proceedings took place, and reiterated in

the board's communications dated 5 November 2020 and 10 December 2021. No substantive reply to any of the board's objections under Articles 84 and 56 EPC has however been provided (cf. point III above).

- 2.4 Moreover, non-attendance of the very first oral proceedings scheduled for 6 November 2020 in view of the COVID-19 situation was caused by the appellant's own failure to attend those oral proceedings by videoconference or to arrange for attendance by a professional representative not subject to COVID-19 travel restrictions at that time.
- 2.5 In addition, after the board had announced that the oral proceedings scheduled for 4 February 2022 would not be postponed for the reasons given above, the appellant did not inform the board that it would not attend the oral proceedings. These oral proceedings had therefore to be held *in absentia* and the appellant had to be treated as relying on its written case (cf. Article 15(3) RPBA).
- 2.6 In view of the above, the appellant's right to be heard under Article 113(1) EPC has been respected.
3. *Allowability of the main (and sole) request*

Claim 1 comprises the following limiting features (feature labelling introduced by the board):

- A) A method of creating a generic wireless communication platform for user applications in an area of wireless communication

- B) in high frequency bands at least in the range of 300 MHz to 2.60 GHz[, particularly for home and office automation systems],
- C) utilising a module,
- D) wherein the module comprises a block for wireless communication,
 - D1) connected to an antenna interface and
 - D2) a power supply interface and also
 - D3) to a control block,
- E) the module further includes a control unit
 - E1) comprising a central processor unit,
 - E2) a first memory unit with the operating system control code to ensure the function of wireless communication and
 - E3) a second memory unit for storing or starting up a user-defined application control code,
- F) where the control unit is connected
 - F1) to the control block,
 - F2) to the communication interface of the module
and
 - F3) to the power supply interface,

wherein the method comprises

- G) adding a control code for an operating programming mode of the module to the first memory unit of the module,
- H) dedicating the input and output terminals I/O of the control unit to respective operations to be performed,
- I) the addresses and the method of selecting the individual services of the operating system are published[,]
- J) whilst for uploading an application control code in the second memory unit for storing or starting up a user-defined application control code,
 - J1) the communication interface of the module is used
 - J2) to allow the [operating system] control code for the first memory unit and the [user-defined] application control code for the second memory unit be developed and stored separately.

3.1 *Claim 1 - clarity (Article 84 EPC)*

- 3.1.1 As to **feature A** of claim 1, the term "generic wireless communication platform" is a vague rather than a well-recognised term in the respective technical field.
- 3.1.2 As to **feature F2**, there is no antecedent basis for "the communication interface".

- 3.1.3 As to **feature H**, there is no antecedent basis for "the input and output terminals I/O of the control unit". It is further unclear *which* I/O terminals are actually meant. It is also not clear what is to be understood by the term "dedicate" in this context, or what limiting effect this feature has on the method, since where I/O terminals are used in an operation, they are also "dedicated" to the operation.
- 3.1.4 As to **feature I**, it is unclear what is to be understood by this feature. In the light of paragraph [0015] of the present description, it appears that the claimed addresses and the method could relate to the "services of the operational system control code stored in the memory with the operational system control code". Hence, this feature could relate to the publication in a user manual of a list of *memory addresses* indicating where to retrieve the code implementing each of the individual services. However, it could also relate to publicly known *Internet addresses* and a software program published on the Internet for selecting the services.
- 3.1.5 As to **features J, J1 and J2**, these features are unclearly worded, in particular due to the phrase "developed and stored separately".
- 3.1.6 Thus, present claim 1 is not clear. The appellant refrained from making any comments in reply to the clarity objections set out in the board's preliminary opinion (cf. point III above).
- 3.1.7 As a consequence, the main request is not allowable under Article 84 EPC.

3.2 *Claim 1 - inventive step (Article 56 EPC)*

3.2.1 Given that some features of claim 1 are unclear (see point 3.1 above), the board adopts the following claim interpretation for the assessment of inventive step:

- As to feature A, its wording embraces e.g. a platform capable of operating with a *plurality* (at least two) of wireless communication standards.
- As to feature F2, the phrase "the communication interface" is interpreted as "a communication interface".
- As to feature H, the phrase "the input and output terminals I/O of the control unit" is interpreted as "input and output terminals I/O of the control unit".
- As to feature I, it is interpreted as the publication in a user manual of a list of *memory addresses* indicating where to retrieve the code implementing each of the individual services.
- As to features J, J1 and J2, they are interpreted as meaning that an "externally developed and stored operating system control code" is uploaded to the *first* memory unit and that an "externally developed and stored user-defined application control code" is uploaded to the *second* memory unit, both using the respective communication interface.

3.2.2 The board has reviewed the reasons given by the examining division in the impugned decision (cf. Reasons 1.1 to 1.4) as well as the appellant's counter-arguments presented in its statement of grounds

of appeal, and agrees with the conclusion of the examining division that the subject-matter of claim 1 lacks an inventive step, if not entirely for the same reasons.

3.2.3 The board considers that document **D1** discloses the following features of claim 1:

- A, B: cf. paragraph [0016].
- C: cf. Fig. 1: "Programmable Logic Controller, PLC 100".
- D: "a wireless transceiver port, and means for establishing connection with wireless and Internet communication network"; cf. claim 2, item (d).
- D2: "Power supply 130"; cf. paragraph [0031].
- D3: "Wireless Data Service"; cf. paragraph [0016].
- E: cf. paragraphs [0032] to [0034], also relevant for features E1 and E2 below.
- E1: "Central Processing Unit 110".
- E2: "System memory"; cf. page 4, left-hand column, lines 4-7.
- E3: "Application memory"; cf. page 4, left-hand column, lines 8-10.
- F: see features F1 to F3 below.
- F1: cf. page 4, left-hand column, lines 26-29.
- F2: "Wireline Connection Port 140", *ibid.*
- F3: cf. paragraph [0034], lines 11-13.
- G: cf. page 4, left-hand column, lines 2-7; NB: installing by the manufacturer is embraced by "adding a control code".
- H: cf. paragraph [0039], lines 4-6; moreover, the CPU 110 must inherently be connected to the Wireless Transceiver Port via I/O pins.

- 3.2.4 The subject-matter of claim 1 therefore differs from the disclosure of D1 in **features D1, I, J, J1 and J2**.
- 3.2.5 Re **feature D1**: according to paragraph [0016], last sentence, of D1, "[t]he Wireless Data Service also contains necessary wireless device drivers to link with wireless transceiver and antenna". The "wireless transceiver port 150" being part of the PLC 100, it must be somehow connected to the antenna. In D1, module 100 does not have a direct connection with an antenna interface. However, it does not require any inventive activity to combine two *separate* elements in a *single* combined module.
- 3.2.6 Re **feature I**: the "publishing" of addresses and programs is a *non-technical* activity, depending on administrative considerations, which therefore does not contribute to inventive step (cf. T 641/00, headnote I). In any event, the publication of a list of "memory addresses" of operating-system routines stored in a non-volatile memory, e.g. a ROM, to be called from user programs was a technique notoriously known already in the 1980s (e.g. "KERNAL" calls in the 8-bit computer *Commodore C64*). Hence, the skilled person would have readily considered this technique when implementing the "operating functions of the Real-time Operation System 210" (see D1, paragraph [0035]).
- 3.2.7 Re **features J, J1 and J2**: the updating of an operating system and/or application programs (e.g. plugins) via an HTTPS connection such as that present in D1 was well-known to the person skilled in the field of computer networks at the application's filing date. Thus, this feature cannot contribute to inventive step either.

3.2.8 The appellant argued mainly that wireless port 150 of D1 was included in order "to make connection to different communication networks outside PLC" and that the generic platform of the application was not obvious in this light, since, "[i]f that were the case, knowledge of a PC computer having Operating system, Program memory and some kind of wireless module, e.g. WiFi, may result in the solution described in the application" (cf. statement of grounds of appeal, page 2, third paragraph).

The board has indicated above why it does not consider that including RF circuitry in the module involves an inventive step. Further, it indeed appears that a PC with wireless circuitry, e.g. WiFi and Bluetooth circuitry, could in fact be programmed to be a generic device being able to carry out the method of claim 1.

3.2.9 The appellant further argued that, despite common general knowledge, experts considered such an idea [as described in the present application] prior to the application's filing date to be unrealisable for technical and economic reasons, in particular in very "small embedded systems". Instead, the practice of "software stacks" for embedded systems was commonly used.

The board however points out that claim 1 is not limited to such *small embedded systems*, nor is there any feature which could credibly contribute to enhancing the miniaturisation of the module. Claim 1, moreover, apparently does not exclude the use of software stacks.

3.2.10 The appellant further listed a number of features of the "complete ecosystem" to which the present

application related, and implied that a degree of commercial success had been achieved.

However, many of these features are not claimed, and, in any case, the PLC of D1 comprises similar features to those listed. In addition, "commercial success" is normally not a justification for inventive step since it may be the result of other factors, e.g. successful *marketing*, rather than being due to *technical* improvements.

- 3.2.11 The board concludes that the subject-matter of claim 1 does not involve an inventive step having regard to D1. Hence, even if claim 1 was considered clear, it would not be allowable under Article 56 EPC either.

4. Since there is no allowable set of claims, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated