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**Datasheet for the decision
of 4 March 2025**

Case Number: T 0219/21 - 3.4.01

Application Number: 05849660.5

Publication Number: 1825720

IPC: H05B37/02, H05B41/38

Language of the proceedings: EN

Title of invention:

DISTRIBUTED INTELLIGENCE BALLAST SYSTEM AND EXTENDED LIGHTING
CONTROL PROTOCOL

Patent Proprietor:

Lutron Technology Company LLC

Opponent:

Tridonic GmbH & Co KG

Headword:

Ballast system / Lutron technology

Relevant legal provisions:

EPC Art. 84, 123(2)

Keyword:

Claims - clarity (no)

Amendments - added subject-matter (yes)



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Case Number: T 0219/21 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 4 March 2025

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
1 March 2021 concerning maintenance of the
European Patent No. 1825720 in amended form.**

Composition of the Board:

Chairman P. Scriven
Members: P. Fontenay
D. Rogers

Summary of Facts and Submissions

- I. The proprietor and the opponent both appealed the Opposition Division's interlocutory decision, finding the European patent allowable in an amended form.

- II. The grounds of opposition were Article 100(a) EPC (lack of novelty (Article 54 EPC) or lack of an inventive step (Article 56 EPC)), Article 100(b) EPC (insufficiency of disclosure), and Article 100(c) EPC (added subject-matter).

- III. In the course of opposition proceedings, the proprietor filed amended sets of claims for a main request and auxiliary requests 1a-1d, 2, 2a-2d, 3, and 3a-3d.

- IV. The Opposition Division decided that the subject-matter of claim 1 of the main request and auxiliary requests 1a to 1d extended beyond the content of the application as filed (Article 123(2) EPC). They decided, however, that auxiliary request 2 was allowable. In particular, the objections of added subject-matter and lack of sufficiency were rejected.

- V. With regard to patentability, the Opposition Division considered that the proprietor had validly claimed the benefits of a priority right. This implied that document

which was the only document on which substantiated objections regarding novelty and inventive step had been based, did not form part of the state of the art under Article 54(3) EPC.

- VI. The proprietor initially requested, as a main request, that the decision be set aside and the patent maintained on the basis of a set of claims according to the main request, which was the same as the main request underlying the appealed decision. In the alternative, the proprietor requested maintenance of the patent on the basis of one of auxiliary requests 2, 2a-2d, 3, or 3a-3d. The auxiliary requests were the same as the correspondingly labelled requests filed before the Opposition Division. There is no set of claim requests labelled as "auxiliary request 1" on file.
- VII. The opponent's main request was that the decision of the Opposition Division be set aside and that the patent be revoked. Alternatively, the opponent requested that the Board remit the case to the Opposition Division, for them to decide on the grounds of opposition other than Article 123(2) EPC.
- VIII. After the filing of the parties' statements of grounds and replies, the European Patent Office was informed that the patent had lapsed in all designated states. In response to the Board's inquiry, the opponent requested that the opposition proceedings be continued.

- IX. The Board arranged to hold oral proceedings, sent a summons to the parties, and informed them of its provisional opinion.
- X. The proprietor subsequently withdrew its appeal.
- XI. A consequence of the withdrawal of the proprietor's appeal is that their initial main request is no longer part of the proceedings. The claims reproduced below, as well as certain reproduced sections of the Board's provisional opinion, are nevertheless related to the initial main request, so that the final conclusions reached by the Board with regard to pending auxiliary requests 2, 2a-2d, 3 and 3a-3d can be understood.
- XII. Claims 1 and 8 of the proprietor's initial main request reads (with the feature references as used in the impugned decision):
1.
 - 1a) *A method for processing electronic photosensor information in a ballast (12) of a multi-ballast lighting system (100),*
 - 1b) the ballast coupled directly to a photosensor (22),
 - 1c) the multi-ballast lighting system having a plurality of ballasts connected together for exchanging data over a communication link (16), the method comprising:
 - 1d) receiving at the ballast the electronic photosensor information from the photosensor;

1e-m) determining in the ballast whether the ballast is operating in an out-of-box mode representing a default configuration; and
1f-m) broadcasting the electronic photosensor information from the photosensor on the communication link if the ballast is operating in the out-of-box mode representing a default configuration.

8.

8a) A ballast (12) for use in a multi-ballast lighting system (100),
8b) the ballast coupled directly to a photosensor (22) for receiving electronic photosensor information,
8c) the multi-ballast lighting system having a plurality of ballasts connected together for exchanging data over a communication link (16), the ballast comprising:
8d) a communication port (36) adapted to be coupled to the communication link
8e) a photosensor input (38B) adapted to receive electronic photosensor information from the photosensor;
8f) a memory adapted to store the electronic photosensor information; and
8g) a processor (14) operatively coupled to
8g1) the communication port,
8g2) the photosensor input, and
8g3) the memory,
8h-m) the processor adapted to determine whether the ballast is operating in an out-of-box mode representing a default configuration, and
8i-m) to broadcast the electronic photosensor information on the communication link if the

ballast is operating in the out-of-box mode representing a default configuration.

XIII. Auxiliary request 2 differs from the main request in that claim 8 contains the further indication that the broadcasting is "via the communication port". Independent claims 1 and 8 of auxiliary requests 2 and 2a-2d have in common that they include the terms "coupled directly to" and refer to the notion of "out of box mode representing a default condition". Auxiliary requests 3 and 3a-3d correspond to the main request and auxiliary requests 2 and 2a-2d, respectively, but without the claims relating to a ballast (claims 8-13).

XIV. In the Board's communication under Article 15(1) RPBA 2020, the parties were informed *inter alia* of the Board's preliminary opinion regarding the then pending main request and auxiliary request 2 according to which:

- the terms "coupled directly to" in features 1b and 8b had no clear meaning and thus contravened the prohibition of Article 123(2) EPC;
- the notion of an "out of box mode representing a default condition" was unclear under Article 84 EPC.

XV. Concretely, the Board observed:

Main request - Added subject-matter

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Features 1b, 8b - "coupled directly"

10. *The Opposition Division acknowledged that there was no verbatim disclosure in the application as filed for the feature of the ballast being coupled directly to the photosensor as recited in claims 1 and 8. They stressed that the phrase "directly coupled to" implied a communication without intermediate devices. Such a coupling was disclosed, for example, in paragraphs [0054], [0057], [0059], and [0129] of the application as filed. Particular reference was made to paragraph [0129] which stated that the "ballast obtains a raw photosensor reading". In the opposition Division's view, this implied that no further intermediate devices were present.*

11. *It is unclear whether the term "coupled directly" simply implies the absence of intermediate devices, as put forward. The terms are inherently ambiguous and may also have a spatial meaning, as noted by the opponent, simply requiring that the ballast be in physical contact with the photosensor. However, while certain ballasts of the invention disclose them as receiving photosensor readings from remote photosensors on other ballasts, the description also discloses combinations of photosensor and ballasts that can operate independently (Figure 1), thus adding to the confusion.*

12. The content of the file wrapper does not help. It seems that the terms in question were introduced for the first time in the set of claims filed on 2 April 2009, which defined the claims on the basis of which the search was to be carried out (see accompanying letter, page 2). Claim 9 of the then filed claims referred to a photosensor and to a ballast being coupled directly to it, while former claim 29, relied upon as basis for the amended claim, referred to a sensor and at least one remote device.

13. The various interpretations relied upon by the parties illustrate the broad spectrum of meanings associable with "coupled directly". However, the phrase "coupled directly to" must be construed in view of the function to be achieved by this feature under the circumstances. Taking account of the various configurations for coupling ballasts to photocell sensors in the original disclosure, it appears that a distinction is made between ballasts obtaining their information from remote sensors and those which are autonomous in that they rely on their own photocell sensors. From a functional point of view, the feature regarding the location of the photosensor in contact with the ballast does not appear to be essential in this context and does not permit a limitation of to this particular aspect.

14. All in all, this latter finding confirms the view that no clear meaning can

be associated to the terms "coupled directly".

Features 1e-m/1f-m and 8h-m/8i-m: "out-of-box mode representing a default configuration"

15. *The Opposition Division held that the terms: "out-of box mode is a generally used term which would be understood by the skilled person and [...] represents [...] a default configuration after manufacture." Therefore, the terms were considered to be in line with the original disclosure. Particular reference was made to paragraph [0096].*

16. *However, paragraph [0096] of the application as filed discloses two requirements for the out-of-box mode representing the default configuration, namely that the mode is "upon initial installation", and excludes the existence of "other instituted configuration." In the opponent's view, the omission of these conditions amounts to a unallowable intermediate generalisation.*

17. *The Board concurs with the opponent that a "default configuration upon initial installation" is not the same as a "default configuration after manufacture." Changes could be made to the default configuration after manufacture but prior to installation, for instance based on an intended use of the*

ballast. Directly after installation, the ballast is then in a "default configuration upon initial installation" which can be different to a previous "default configuration after manufacture."

18. The definition, in paragraph [0096] of the published application, that an "installed ballast will be in out-of-box mode if it has not been configured upon installation" is, in effect, devoid of ambiguity. It simply specifies that, in the context of the invention, the terms are given their common meaning, as referring to a mode defined during the manufacturing process. Contrary to the opponent's opinion, the following statement in paragraph [0096] regarding the assumption of an absence of other instituted configuration, confirms this definition. All in all, this definition specifies that, in the absence of an instituted configuration, the out of the box mode defines the operating mode.

19. Even if a basis does exist for the amendment, it appears questionable whether the amendment is clear in the context of the invention (Article 84 EPC). This is in particular true considering that the claimed definition does not permit to establish whether a predetermined system falls under the recited features of an out-of-box mode and a default configuration.

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Auxiliary request 2 - clarity

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37. The concept of "an out-of-box mode representing a default configuration" is objected to under Article 84 EPC. For the opponent, this implies that both claims 1 and 8 are unclear contrary to Article 84 EPC.

38. The references to an out-of-box mode and to a default configuration do not contradict one another. There is no contradiction in the patent specification, that the mode be representative of a default configuration in addition to having been defined upon manufacture. The term "out-of-box mode" appears to refer to a configuration defined upon manufacture. In the context of the invention, it also corresponds to a default mode for the ballast when operating. The Board does not see any technical ambiguity in the use of the article "a" when referring to the default configuration. The use of the indefinite article, before referring to the configuration in relation to the out-of-box mode does not contradict the generally-accepted meaning of the terms out-of-box, but simply acknowledges the existence of a multiplicity of possible default configurations.

39. However, as underlined above, the reference in the claim to these two concepts does not permit identification, in any

particular ballast, of whether the operating method corresponds to the recited features which appear thus to be deprived of any clear meaning in the context of the invention. Although technically understandable, the terms used appear to be without effect on the claim's understanding contrary to Article 84 EPC.

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- XVI. The Board's provisional opinion did not comment on auxiliary requests 2a-2d, 3 and 3a-3d, but indicated the Board's intention to consider them in the light of the objections that had been raised under Article 123(2) EPC and Article 84 EPC, and the conclusions to be reached with regard to the then pending main request and auxiliary request 2.
- XVII. In their reply to the Board's preliminary opinion, the opponent submitted new arguments as to added subject-matter and reiterated their objections of lack of novelty and inventive step to the independent claims of the then pending main request. These comments applied *mutatis mutandis* to auxiliary requests 2, 2a-2d, 3, 3a-3d.
- XVIII. Both parties informed the Board that they would not be represented at oral proceedings. The Board cancelled the oral proceedings.

Reasons for the Decision

1. The Board does not see any reason to change its view, as put forward in its provisional opinion.
2. For the reasons reproduced above with regard to the then pending main request, the terms "coupled directly" in claims 1 and 8 of auxiliary requests 2 and 2a-2d are unclear in the context of the patent specification and define added subject-matter, contrary to Article 123(2) EPC.
3. The same objection applies to claim 1 of auxiliary requests 3 and 3a-3d.
4. For the reasons reproduced above with regard to auxiliary request 2, the reference to an out-of-box mode representing a default configuration, that was added in the independent claims in the course of the opposition proceedings, is unclear, contrary to Article 84 EPC.
5. Claim 1 of each of auxiliary requests 2a-2d, 3, and 3a-3d contain references to an out-of-box mode representing a default configuration. The additional amendments to claim 1 of these requests is without any bearing on the meaning of these notions in claim 1. Claim 1 of each of these requests is thus not clear in the sense of Article 84 EPC, for the reasons put forward above with regard to claim 1 of the main request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



C. Moser

P. Scriven

Decision electronically authenticated