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# Datasheet for the decision of 20 August 2025

**Case Number:** T 1962/23 - 3.5.05

**Application Number:** 15757456.7

**Publication Number:** 3335434

**IPC:** H04R25/00

**Language of the proceedings:** EN

**Title of invention:**
System and method for personalizing a hearing aid

**Patent Proprietor:**
WS Audiology A/S

**Opponent:**
GN Hearing A/S

**Headword:**
Secure elements for fine-tuning/WS AUDIOLOGY

**Relevant legal provisions:**
EPC Art. 56

**Keyword:**
Inventive step - auxiliary request 5 (no): no credible technical effect derivable - defining user access rights as such not a technical matter

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**Case Number: T 1962/23 - 3.5.05**

# D E C I S I O N
# of Technical Board of Appeal 3.5.05
# of 20 August 2025

| | |
|---|---|
| **Appellant:** (Patent Proprietor) | WS Audiology A/S<br>Nymøllevej 6<br>3540 Lynge (DK) |
| **Representative:** | Betten & Resch<br>Patent- und Rechtsanwälte PartGmbB<br>Maximiliansplatz 14<br>80333 München (DE) |
| **Respondent:** (Opponent) | GN Hearing A/S<br>Lautrupbjerg 7<br>2750 Ballerup (DK) |
| **Representative:** | GN Store Nord A/S<br>Lautrupbjerg 7<br>2750 Ballerup (DK) |
| **Decision under appeal:** | **Interlocutory decision of the Opposition Division of the European Patent Office posted on 25 October 2023 concerning maintenance of the European Patent No. 3335434 in amended form.** |

**Composition of the Board:**

| | |
|---|---|
| **Chair** | K. Bengi-Akyürek |
| **Members:** | E. Konak |
| | C. Heath |

## Summary of Facts and Submissions

I. Both the proprietor and the opponent filed an appeal against the interlocutory decision of the opposition division finding that, on the basis of "auxiliary request 5", the patent in suit met the requirements of the EPC.

II. In the present decision, reference is made to the following prior-art document:

**D2**: US 8,243,938 B2.

III. Oral proceedings were held before the board on 20 August 2025. At the end of these oral proceedings, the proprietor withdrew its appeal and then the board announced its decision.

- The opponent requested that the decision under appeal be set aside and that the patent be revoked.

- The proprietor requested that the appeal be dismissed.

IV. Claim 1 of **auxiliary request 5** reads as follows:

"A hearing aid manufacture system for personalizing one or more hearing aids, comprising:
- a server (37) managing user accounts for a plurality of hearing aid users, the user accounts including an audiogram for a hearing aid user; and
- a programming station (41) adapted to receive and program, in a programming station (41) of the manufacturing facility, the one or more hearing aids,

characterized in that

- the programming station (41) is adapted to receive programming instructions from the server (37) for pre-programming the one or more hearing aids by means of the audiogram, whereby the one or more hearing aids become personalized for alleviating the hearing loss of the hearing aid user, wherein the user account is created and maintained in the server (37) by the user and hearing professionals permitted by the user, and wherein the user account contains a data set (50) including a personal information data field (51) and a data field (58) containing security elements including credentials for access to one or more data fields in the hearing aid user account and secure keys for establishing a secure connection between the master server (37) and the at least one personalized hearing aid, wherein the security elements define what the hearing healthcare professional is permitted to do in relation to the reading and editing of the software setting of the at least one personalized hearing aid, and wherein the data set (50) further includes a Hearing Loss Characterization data field (55) storing the audiogram, a hearing compensation profile data field (56) storing current settings for alleviating the user's hearing loss calculated based on the audiogram, and a hearing aid ID data field (57) storing a hearing aid ID;

wherein the system further includes programming equipment for, during fine tuning in consultation between the hearing aid user and a hearing healthcare professional, being connected to the at least one personalized hearing aid, whereby the hearing healthcare professional connects fine-tuning equipment (45) to the at least one personalized hearing

aid and carries out the fine-tuning of the at least one personalized hearing aid in dialogue with the hearing aid user, and wherein the hearing healthcare professional is able by means of a computer to access the user account in the master server to retrieve the hearing aid ID from the hearing aid ID data field and, from the data field, the security elements required to perform the fine tuning of the personalized hearing aid."

## Reasons for the Decision

1. Auxiliary request 5 - Inventive step (Article 56 EPC)

1.1 Claim 1 of **auxiliary request 5** includes the following limiting features (board's labelling):

G1: A hearing aid manufacture system for personalising one or more hearing aids, comprising:
G2: a server managing user accounts for a plurality of hearing aid users, the user accounts including an audiogram for a hearing aid user;
G3: a programming station adapted to receive and program, in a programming station of the manufacturing facility, the one or more hearing aids, wherein
G4: the programming station is adapted to receive programming instructions from the server for pre-programming the one or more hearing aids by means of the audiogram, whereby the one or more hearing aids become personalised for alleviating the hearing loss of the hearing aid user, wherein the user account is created and maintained in the server by the user and hearing professionals permitted by the user,

G5: wherein the user account contains a data set including a personal information data field and a data field containing security elements including credentials for access to one or more data fields in the hearing-aid user account and secure keys for establishing a secure connection between the master server and the at least one personalised hearing aid, wherein the security elements define what the hearing healthcare professional is permitted to do in relation to the reading and editing of the software setting of the at least one personalised hearing aid, and wherein the data set further includes a Hearing Loss Characterization data field storing the audiogram, a hearing compensation profile data field storing current settings for alleviating the user's hearing loss calculated based on the audiogram, and a hearing aid ID data field storing a hearing aid ID;

G6: wherein the system further includes programming equipment for, during fine-tuning in consultation between the hearing aid user and a hearing healthcare professional, being connected to the at least one personalised hearing aid, whereby the hearing healthcare professional connects fine-tuning equipment to the at least one personalised hearing aid and carries out the fine-tuning of the at least one personalised hearing aid in dialogue with the hearing-aid user and wherein the hearing healthcare professional is able by means of a computer to access the user account in the master server to retrieve the hearing aid ID from the hearing aid ID data field and, from the data field, the security elements required to perform the fine-tuning of the personalised hearing aid.

1.2 The parties agreed that the distinguishing features of claim 1 over document **D2** were **features G5 and G6.**

1.3 The proprietor argued that the combined technical effect of the distinguishing features was to protect hearing-aid data when fine-tuning a hearing aid and to restrict unauthorised access to it. The distinguishing features provided for end-to-end encryption between the "server" and the "hearing aid", enabling secure and controlled remote access to sensitive configuration data of a personalised hearing aid. In its written submissions, the proprietor then formulated the objective technical problem as *how to protect user data when a user desires modifications of the settings of the hearing aid which was manufactured with characteristics based on their "personality profile"*, as described in D2. At the oral proceedings before the board, it formulated the objective technical problem as *how to enable remote fine-tuning of a hearing aid in a secure connection*.

1.4 The proprietor also argued that a major idea behind the present invention was to carry out a "primary programming" of a hearing aid at the manufacturing site (see also Fig. 4, steps 100 to 105), where more powerful equipments are available, and to do the "fine-tuning" later (see also Fig. 4, steps 107 to 110). As fine-tuning involved considerably smaller data sizes, it was possible to make use of available encryption technology with a hearing aid which normally did not have substantial processing resources.

1.5 However, as also evident from the proprietor's own formulations of the objective technical problem so as to include pointers to the process of "fine-tuning" of a hearing aid or the "user desir[ing] modifications of

[its] settings", the allocation of the tasks involved in programming a hearing aid to a manufacturing facility, at which a primary programming takes place, and to a remote site, at which a hearing healthcare professional fine-tunes the setting of the hearing aid, is not necessarily based on *technical* considerations. Instead, it is a *non-technical* requirement dictated by the simple fact that a user is not entirely happy with the settings of their hearing aid and wants adjustments to be made by their healthcare professional.

1.6 The board notes that the opposition division considered, in particular, "the security elements defin[ing] what the hearing healthcare professional is permitted to do in relation to the reading and editing of the software setting of the at least one personalized hearing aid" (i.e. **feature G5**) not to be obvious over the prior art, suggesting implicitly that it has a technical effect, namely "*limiting the possibilities for fine tuning of a personalized hearing aid*" (cf. appealed decision, Reasons 19.1).

However, *defining* the access rights of the users of a system (e.g. by an administrator) is not a technical matter, either. At any rate, it goes without saying that, especially for the settings of a medical device such as a hearing aid, access should be strictly restricted only to *authorised* users and only to edit a limited number of settings for many obvious reasons.

1.7 Regarding the "secure keys" of feature G5, the board noted in its preliminary opinion that it cannot see them being used anywhere and that merely storing "secure keys" in a "data field" would not give rise to any technical effect. The proprietor replied that the "secure keys" were indeed used, as explicitly stated in

feature G5, "for establishing a secure connection between the master server and the at least one personalized hearing aid". However, during the "fine-tuning" of the hearing aid according to **feature G6**, the "hearing healthcare professional" connects their "fine-tuning equipment" to the hearing aid and carries out its "fine-tuning". Yet, it is not mentioned that the fine-tuning involves a connection between the "master server" and the "hearing aid". Therefore, a "secure key", which is aimed at "*establishing a secure connection between the master server and the [...] personalized hearing aid*", cannot possibly be used during fine-tuning, which involves instead a connection between the "fine-tuning equipment" and the "hearing aid". Thus, it is not credible that features G5 and G6 give rise to a technical effect as to establishing encrypted or secure connections while fine-tuning a hearing aid. Therefore, they cannot contribute to inventive step.

1.8 Hence, the subject-matter of claim 1 of auxiliary request 5 does not involve an inventive step (Article 56 EPC).

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chair:

B. Brückner K. Bengi-Akyürek

Decision electronically authenticated