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**Datasheet for the decision
of 21 October 2025**

Case Number: T 0691/24 - 3.5.05

Application Number: 14719415.3

Publication Number: 2974212

IPC: H04L29/06

Language of the proceedings: EN

Title of invention:

Filtering network data transfers

Patent Proprietor:

Centripetal Limited

Opponents:

Cisco Systems, Inc.
Palo Alto Networks, Inc.

Headword:

Convergence as admittance criterion/CENTRIPETAL

Relevant legal provisions:

EPC Art. 123(1)
EPC R. 79(1), 116(2)
RPBA 2020 Art. 12(6), 13(2)

Keywords:

Admittance of non-admitted claim requests - main and 1st auxiliary request (no): no erroneous exercise of discretion by the opposition division

Admittance of claim request filed during oral proceedings before the board - auxiliary request 9a2 (no): no "exceptional circumstances" justified with cogent reasons

Admittance of claim requests withdrawn or replaced - 2nd and 3rd auxiliary requests (no): should have been maintained in first-instance proceedings

Decisions cited:

R 0006/19, T 0966/17, T 0256/19, T 0683/19, T 3097/19,
T 0364/20, T 0847/20, T 0868/20, T 0405/24

Catchword:

As to the applicability of the criteria of "late-filed" and "lack of convergence" to admittance decisions in opposition proceedings, see points 1.1.3 to 1.1.6 of the Reasons.



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Case Number: T 0691/24 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 21 October 2025

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 15 March 2024
revoking European patent No. 2974212 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chair	K. Bengi-Akyürek
Members:	J. Eraso Helguera
	C. Heath

Summary of Facts and Submissions

- I. The appeal was filed by the proprietor against the decision of the opposition division to revoke the opposed patent under Article 101(3)(b) EPC for non-admissibility of the claim requests on file.
- II. Oral proceedings before the board were held on 21 October 2025. The final requests of the parties were:
- The proprietor (appellant) requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of one of five claim requests, i.e. a **main request** (former "auxiliary request 9a1"), an **auxiliary request 9a2**, a **first auxiliary request** (former "auxiliary request 9b"), a **second auxiliary request** (former "auxiliary request 10a") and a **third auxiliary request** (former "auxiliary request 9").
 - The opponents (respondents) requested that the appeal be dismissed.

At the end of those oral proceedings, the board announced its decision.

- III. Claim 1 of the **main request** (labelled "AUXILIARY REQUEST 9a1") reads as follows:

"A method comprising:

at a computing platform (110) comprising at least one processor (204), memory (206), and communication interface (208, 210):

receiving (400), via the communication interface, a plurality of Internet Protocol, IP, packets, wherein each packet of the plurality of packets comprises an IP packet header and an application packet, wherein each IP packet header comprises a plurality of IP packet header field values, and wherein each application packet comprises a plurality of application header field values within an application header;

determining (402), by the processor, that at least a portion of the plurality of IP packets have IP packet header field values corresponding to a packet filtering rule of a plurality of packet filtering rules stored in the memory;

responsive to the determining that the at least a portion of the plurality of IP packets have IP packet header field values corresponding to the packet filtering rule stored in the memory, forwarding (404) the at least a portion of the plurality of IP packets to an operator (220, 222, 224) specified by the packet filtering rule, wherein the operator specifies one or more application header field value criteria;

determining (406), by the operator, whether one or more of the at least a portion of the plurality of IP packets have one or more application header field values corresponding to the one or more application header field value criteria specified by the operator;

responsive to the determining that the one or more of the at least a portion of the plurality of IP packets have one or more application header field values corresponding to the one or more application header field criteria specified by the operator, applying (408), by the operator, at least one packet

transformation function specified by the operator to the one or more of the at least a portion of the plurality of IP packets; and

responsive to the determining that the one or more of the at least a portion of the plurality of IP packets have one or more application header field values not corresponding to the one or more application header field criteria specified by the operator, applying one or more additional packet filtering rules of the plurality of packet filtering rules to the one or more of the at least a portion of the plurality of IP packets having one or more application header field values not corresponding to the one or more application header field criteria specified by the operator."

Claim 1 of **auxiliary request 9a2** (labelled "AUXILIARY REQUEST 9a2") differs from claim 1 of the main request in:

- the replacement of "whether" by "that",
- the insertion of the word "first" right before each of the first three occurrences of the phrase "one or more of the at least a portion",
- the insertion of the wording "determining (406), by the operator, that the second one or more of the at least a portion of the plurality of IP packets have one or more application header field values not corresponding to the one or more application header field value criteria specified by the operator;" right before the phrase "and responsive to determining",
- the insertion of the word "second" before the last two occurrences of the phrase "one or more of the at least a portion".

Claim 1 of the **first auxiliary request** (labelled "AUXILIARY REQUEST 9b") differs from claim 1 of the main request in the insertion of the wording

" , and wherein the operator is separate from the packet filtering rule so that the operator can be specified by multiple packet filtering rules of the plurality of packet filtering rules stored in the memory"

right after the phrase "wherein the operator specifies one or more application header field value criteria".

Claim 1 of the **second auxiliary request** (labelled "AUXILIARY REQUEST 10a") differs from claim 1 of the main request in the deletion of the clause

"; and responsive to the determining that the one or more of the at least a portion of the plurality of IP packets have one or more application header field values not corresponding to the one or more application header field criteria specified by the operator, applying one or more additional packet filtering rules of the plurality of packet filtering rules to the one or more of the at least a portion of the plurality of IP packets having one or more application header field values not corresponding to the one or more application header field criteria specified by the operator"

and the insertion of the term "only" right before the expression "to the determining that the one or more of the at least a portion".

Claim 1 of the **third auxiliary request** (labelled "9TH AUXILIARY REQUEST") differs from claim 1 of the main

request in the deletion of the phrase

"to the one or more of the at least a portion of the plurality of IP packets having one or more application header field values not corresponding to the one or more application header field criteria specified by the operator"

at the end of the claim.

Reasons for the Decision

1. MAIN REQUEST and FIRST AUXILIARY REQUEST

Claim 1 of the **main request** comprises the following limiting features:

1. A method comprising:
 - 1.1 at a computing platform comprising at least one processor, memory, and communication interface:
 - 1.2 receiving, via the communication interface, a plurality of IP packets, wherein each packet of the plurality of packets comprises an IP packet header and an application packet, wherein each IP packet header comprises a plurality of IP packet header field values, and wherein each application packet comprises a plurality of application header field values within an application header;
 - 1.3 determining, by the processor, that at least a portion of the plurality of IP packets have IP packet header field values corresponding to a

packet filtering rule of a plurality of packet filtering rules stored in the memory;

- 1.4 responsive to the determining that the at least a portion of the plurality of IP packets have IP packet header field values corresponding to the packet filtering rule stored in the memory, forwarding the at least a portion of the plurality of IP packets to an operator specified by the packet filtering rule, wherein the operator specifies one or more application header field value criteria;
- 1.5 determining, by the operator, whether one or more of the at least a portion of the plurality of IP packets have one or more application header field values corresponding to the one or more application header field value criteria specified by the operator;
- 1.6 responsive to the determining that the one or more of the at least a portion of the plurality of IP packets have one or more application header field values corresponding to the one or more application header field criteria specified by the operator, applying, by the operator, at least one packet transformation function specified by the operator to the one or more of the at least a portion of the plurality of IP packets; and
- 1.7 responsive to the determining that the one or more of the at least a portion of the plurality of IP packets have one or more application header field values not corresponding to the one or more application header field criteria specified by the operator, applying one or more additional packet

filtering rules of the plurality of packet filtering rules to the one or more of the at least a portion of the plurality of IP packets having one or more application header field values not corresponding to the one or more application header field criteria specified by the operator.

Claim 1 of the **first auxiliary request** differs from claim 1 of the main request in the following addition:

1.8 the operator is separate from the packet filtering rule so that the operator can be specified by multiple packet filtering rules of the plurality of packet filtering rules stored in the memory.

- 1.1 *Admittance into the appeal proceedings (Article 12(6), first sentence, RPBA)*
- 1.1.1 The **main request** and the **first auxiliary request** were filed during the oral proceedings before the opposition division and were not admitted into the opposition proceedings for being late-filed and non-convergent (main request) and for having been filed "without prior authorisation" (first auxiliary request).
- 1.1.2 In accordance with Article 12(6), first sentence, RPBA, the board shall not admit *requests, facts, objections or evidence* which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.
- 1.1.3 The appellant submitted that these requests could not be considered "late-filed" because they were filed to account for an objection under Article 123(2) EPC newly

raised during the second oral proceedings by the opposition division after it departed from its preliminary opinion on this topic as regards "auxiliary request 9a" (referring to the EPO Guidelines for Examination, E-IV, 2.2.2 and to the Case Law of the Boards of Appeal, V-A, 4.3.6; in particular to **T 683/19**, **T 3097/19**, **T 868/20** and **T 847/20**).

Further, it was the "late-filed" aspect which motivated the opposition division to consider - in addition - the "convergence" of the present main request. However, the same alleged lack of convergence of the main request with auxiliary requests 5 and 6 could have been objected already against auxiliary requests 9 and 9a. Yet, the opposition division did not raise objections. Besides, the intervention filed by opponent 2 - introducing new objections and evidence - had reset the "convergence" requirement as if a new opposition had been filed. Since the claim requests were thus not "late-filed", there was no reason to assess the "convergence" aspect (referring to the EPO Guidelines, H-III, 3.3.2.2). As the opposition division had already come to a positive preliminary finding on compliance with Articles 123(2) and 56 EPC for "auxiliary request 9a", there were no negative implications as to the aspect of procedural economy in admitting "auxiliary request 9a1" (present main request) or "auxiliary request 9b" (present first auxiliary request) into the opposition proceedings. Instead, the opposition division should have used the criterion of "*prima facie* allowability". In summary, the opposition division used the wrong criterion at the wrong time.

The board does not agree. In that regard, there are essentially three questions to be answered: (1) Were the respective claim requests "late-filed", i.e. had

the opposition discretion to disregard those claim requests at all? If yes, (2) was the use of the criterion of "lack of convergence" as regards those claim requests the right or wrong criterion under the particular circumstances? If yes, (3) did the opposition division correctly use the "lack of convergence criterion" in the present case?

1.1.4 *Were the claim requests "late-filed"?*

These claim requests were not filed within the period set out in the opposition division's invitation pursuant to Rule 79(1) EPC that was sent after opponent 2's notice of intervention. Consequently, the intervention alone cannot justify their admittance. Rather, the opposition division had the discretion pursuant to Article 123(1) EPC in conjunction with Rules 81(3), 79(1) and/or 116(2) EPC not to admit them (see e.g. **R 6/19**, Reasons 6 and 7; **T 256/19**, Reasons 4.7). This discretion exists independently of the provisions of Rule 116 EPC and of whether the opposition division deviated from its provisional opinion as set out in the annex to the summons to the first-instance oral proceedings (see e.g. **T 966/17**, Catchword 2: *"Eine Änderung der Auffassung der Einspruchsabteilung in der mündlichen Verhandlung in Bezug auf ihre mit der Ladung kommunizierte vorläufige Meinung kann alleine nicht dazu führen, dass in der mündlichen Verhandlung beliebige Anträge ohne ein Ermessen der Einspruchsabteilung zugelassen werden müssen."*). Thus, the opposition division had indeed discretion not to admit the respective claim requests into the opposition proceedings. In other words, a positive preliminary opinion on auxiliary request 9a - already admitted into the proceedings at the opposition division's discretion - cannot guarantee *per se* the

admittance of yet a further filing of claim requests. Nor does such a positive opinion "reset" the application of the "convergence criterion" which the opposition division relied upon when taking its discretionary decision on admittance in the opposition proceedings. Also the EPO Guidelines (in its version of March 2025) do not state that an opposition division's deviation from its preliminary opinion necessarily constitutes a "change of the subject of the proceedings" within the meaning of Rule 116(1), fourth sentence, EPC (cf. part E, chapter VI, section 2.2.2, board's emphasis: "*The following are examples of what would normally constitute a change of subject of the proceedings: [...] the opposition division departs from a previously notified opinion.*"). Nor can such a deviation as such justify an automatic admittance of claim requests (see the decisions cited by the proprietor, i.e. **T 868/20**, Reasons 3.1.2 and **T 847/20**, Reasons 3.3.3). Moreover, contrary to the facts underlying the quoted case **T 683/19** (cf. Reasons 4), the filing of the present main request was not triggered by the admittance of a fresh prior-art document.

1.1.5 *Was the use of the "lack of convergence criterion" as regards those claim requests the wrong criterion?*

The "convergence criterion" as regards claim requests is definitely a well-established criterion which can legitimately be used by a first-instance department when exercising its discretion as to admittance of late-filed claim requests (and this even before the expiry of the time limit set under Rule 116(1) EPC; see e.g. **T 364/20**, Reasons 7.2.10; see also EPO Guidelines, part E, chapter VI, section 2.2.3: "*Convergence of requests is another of the relevant factors that the*

division may consider when exercising its discretion"). In view of the minutes of the two oral proceedings before the opposition division, the board agrees with the respondents that the discussions concerning auxiliary requests 5 and 6 had already taken a considerable amount of time. Moreover, through the replacement of features, those discussions became at once moot when the appellant moved on to "auxiliary request 10a" (then "new auxiliary request 7") and "auxiliary request 9a" (then "new auxiliary request 8"). The board can but speculate as to why the opposition division decided to issue such a positive opinion on auxiliary request 9a even before having heard the opponents during the second oral proceedings, but, in the board's view, this fact does not "reset" the proceedings. It seems that the proprietor simply ignored the bulk of objections raised by the opponents and focused on a piecemeal approach, promptly reacting to each objection confirmed by the opposition by re-shuffling and amending the claim requests. In summary, the board agrees with the opposition division (see Reasons 35.5 of the decision under appeal) and with the respondents that the present main request - in the lineage of auxiliary requests 9 and 9a - is not convergent with auxiliary requests 5 and 6 and that the opposition division had indeed the discretion to use this criterion to not admit "auxiliary request 9a1", i.e. the present main request, into the opposition proceedings. Finally, the question why the criterion of "*prima facie* allowability" was used for the purpose of admittance considerations as regards other claim requests during the first-instance proceedings instead of the "convergence criterion", i.e. the question as to the consistency in the application of criteria selected from the opposition division's legal toolbox when assessing admittance, has little bearing on whether the

opposition division rightly relied upon a particular criterion in relation to a particular claim request in the present case.

1.1.6 *Did the opposition division correctly use the "convergence criterion" in the present case?*

It is true that the "convergence criterion" represents only an "indicator" that procedural economy may be affected and that whether this is actually the case depends on the circumstances of a particular case, which, therefore, must be considered and balanced (see **T 3097/19**, Reasons 4.2). However, in the present case, the opposition division indicated precisely in view of which higher-ranking claim request the then "auxiliary request 9a1" did not converge (i.e. "previously filed auxiliary request 5") and why this claim request went in a different direction, i.e. which features were in fact replaced (see appealed decision, Reasons 35.5). Hence, the implication on procedural economy were therefore considered and balanced. As a consequence, the opposition division did not use the "convergence criterion" in an unreasonable or erroneous way when disregarding the present main request.

1.1.7 Concerning the present **first auxiliary request**, and as a matter of principle, the board takes issue with the opposition division's announcement to "permit one further request and no more" (see point 97 of the minutes of the second oral proceedings) and its subsequent decision to "not look at the auxiliary request" (see Reasons 38 of the decision under appeal). This is because, firstly, the board sees no legal basis in the EPC to make submissions from a party - irrespective of their content - being subject to prior approval from the deciding body. Secondly, the

limitation to "one further request and no more" - *ex ante* and without any consideration as to their substance - appears to be purely arbitrary.

However, while the board holds that the opposition division indeed committed a procedural violation in that context, it does not consider this violation a *substantial* one. The main reason is that - irrespective of the objections raised under Article 123(3) EPC - the board agrees with the opposition division and with the respondents that, at that stage of the opposition proceedings and with no less than eight additional claim requests filed only after the notice of intervention, the opposition division was entitled to rely on the "convergence criterion", as it did with "auxiliary request 9a1", and its subsequent implications on overall procedural economy, in the exercise of its discretion. According to the appellant, the first auxiliary request is a "continuation" of the main request. Thus, as indicated by the respondents, it likewise must be "non-convergent".

1.1.8 In conclusion, the board sees no good reason to overrule the opposition division's discretionary decision not to admit the main request and the first auxiliary request into the opposition proceedings.

1.2 Consequently, the board did not admit the main request and the first auxiliary request into these appeal proceedings (Article 12(6), first sentence, RPBA).

2. AUXILIARY REQUEST 9a2

Claim 1 of **auxiliary request 9a2** differs from claim 1 of the main request in that the "determining, by the operator, whether" step according to **feature 1.5** that

led to the two separate branches of features 1.6 and 1.7, each introduced by the clause "responsive to the determining that", has been replaced by two distinct groups of features, each of them starting with the phrase "determining, by the operator, that".

2.1 *Admittance into the appeal proceedings (Article 13(2) RPBA)*

2.1.1 The claims of auxiliary request 9a2 were filed *after* the notification of the board's communication under Article 15(1) RPBA. Hence, the admittance of this claim request is governed by Article 13(2) RPBA, according to which any amendment to a party's appeal case is, in principle, not taken into account, unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

2.1.2 As to the admissibility of auxiliary request 9a2, the appellant submitted that only during the oral proceedings had the board expressed concerns about the *prima facie* allowability of the main request under Article 123(3) EPC. Consequently, this was the first opportunity for the appellant to remedy this objection. Furthermore, the amendment was simple and did not introduce any further issues.

2.1.3 In the board's view, these are no "cogent reasons" justifying "exceptional circumstances":

(a) First, the matter of extension of the scope of protection in connection with the replacement of the word "that" by the term "whether" in feature 1.5 had been discussed already in the opposition proceedings (see items 71 and 72 of the minutes of the second oral proceedings).

(b) Second, the board did not deviate from its preliminary opinion issued under Article 15(1) RPBA during the oral proceedings before the board. Rather, during the discussion about admittance of the main request, the board offered the parties the possibility to, in addition to the matter of "convergence", also discuss the issue of "*prima facie* allowability" in view of the outstanding objections under Article 123(2) and (3) EPC already raised by the opponents during the first-instance proceedings and in opponent 2's written reply to the statement of grounds of appeal.

(c) As in **T 405/24**, Reasons 4.1.3(a), the board finds that it is not its duty to provide any kind of "guidance or instructions" to the parties about how to best defend their respective cases. Like in the first-instance proceedings, the appellant reacted to these known issues only after the board announced that it did not find the main request *prima facie* allowable under Article 123(3) EPC and by way of amendment rather than rebuttal.

2.2 Thus, the board did not admit auxiliary request 9a2 into the appeal proceedings (Article 13(2) RPBA).

3. SECOND AND THIRD AUXILIARY REQUESTS

Claim 1 of the **second auxiliary request** differs from claim 1 of the main request in the deletion of feature 1.7 and in the following addition in feature 1.6 (board's emphasis):

1.6' responsive only to the determining that the one or more of the at least a portion of the plurality of IP packets have one or more

application header field values corresponding to the one or more application header field criteria specified by the operator, applying, by the operator, at least one packet transformation function specified by the operator to the one or more of the at least a portion of the plurality of IP packets.

Claim 1 of the **third auxiliary request** differs from claim 1 of the main request in the deletion of the wording "*to the one or more of the at least a portion of the plurality of IP packets having one or more application header field values not corresponding to the one or more application header field criteria specified by the operator*" at the end of feature 1.7.

3.1 *Admittance into the appeal proceedings (Article 12(6), second sentence, RPBA)*

3.1.1 The **second auxiliary request** was withdrawn during the oral proceedings before the opposition division, while the **third auxiliary request** was replaced by former auxiliary request 9a on 1 December 2023 after the second summons to oral proceedings before the opposition division.

3.1.2 In accordance with Article 12(6), second sentence, RPBA, the board shall not admit requests which were no longer maintained in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

3.1.3 With respect to the **second auxiliary request**, the appellant submitted that it withdrew this claim request in order to attempt to remedy the alleged "lack of convergence" of the available claim requests. However,

this issue was only to be assessed for "late-filed" claim requests. This auxiliary request however could not be considered as "late-filed" because it had already been filed within the time limit under Rule 116(1) EPC set out with the summons to the second oral proceedings before the opposition division.

- 3.1.4 As to the **third auxiliary request**, the appellant submitted in item 59 of its written response to the board's preliminary opinion that this request had been indeed timely filed with respect to the time limit under Rule 76(1) EPC and erroneously considered by the opposition division as "late-filed", as indicated in its preliminary opinion dated 5 June 2023 under the section "Admissibility fo auxiliary requests 7-10".
- 3.1.5 The board holds that the circumstances of the present appeal case do not justify the admittance of these claim requests. The appellant's decision to withdraw the present second auxiliary request and to replace the present third auxiliary request virtually relieved the opposition division of the obligation to actually decide on their admittance - including their convergence with auxiliary requests 5 and 6 - and on their substance. Hence, these claim requests should indeed have been *maintained* during the opposition proceedings (cf. Article 12(6), second sentence, RPBA). As explained above, the board thus currently sees no reason to overturn the decision under appeal.

From the outset, the mere fact that these claim requests do not belong to the string of auxiliary requests 5 and 6 would hamper their admittance. If admitted, the board would in fact have to set aside a faultless decision in order to either discuss substantive issues for the first time in appeal

proceedings or to remit the case to the opposition division for further prosecution, where the appellant could still try to file additional claim requests. Yet, none of these options appears to be fair to the respondents and the public or justifiable from the point of view of procedural economy.

3.2 Thus, the board did not admit the present second and third auxiliary requests into the appeal proceedings either (Article 12(6), second sentence, RPBA).

4. Since there is no allowable claim request on file, 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