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**Datasheet for the decision  
of 8 December 2025**

**Case Number:** T 0837/24 - 3.5.05

**Application Number:** 12173832.2

**Publication Number:** 2680535

**IPC:** H04L29/08, H04W4/00, H04M1/60

**Language of the proceedings:** EN

**Title of invention:**  
Providing presence information in a personal communications  
system comprising an interface unit

**Patent Proprietor:**  
GN Hearing A/S

**Opponent:**  
EPOS Group A/S

**Headword:**  
User-related presence message/GN HEARING

**Relevant legal provisions:**  
EPC Art. 123(2), 123(3)  
RPBA 2020 Art. 12(6), 13(2)

**Keywords:**

Admittance of late-filed objection - objection under Art. 123(2) EPC (yes): contradiction in the opposition division's written decision  
Added subject-matter - main request and 1st to 5th auxiliary requests (yes): in view of an alternative, technically meaningful claim interpretation  
Admittance of claim requests filed after Art. 15(1) communication - auxiliary requests M-A and M-B (yes): opposition division's contradictory reasoning of its admittance decision constitutes "exceptional circumstances"  
Extension of scope of protection - auxiliary requests M-A and M-B (yes): "inescapable trap"

**Decisions cited:**

G 0001/24, R 0025/22, R 0014/23, T 0764/16, T 0614/21,  
T 0010/22, T 0423/23, T 0405/24

**Catchwords:**

1. A claim construction omitting a technically meaningful claim feature does not constitute a good-faith interpretation of a claim. Rather, the skilled reader with a "mind willing to understand" the subject-matter of a claim in an objective manner gives a technical meaning to each claim feature (see point 2.4.2 of the Reasons).
2. A self-contradicting or inconsistent appealed decision may in itself constitute "exceptional circumstances" within the meaning of Article 13(2) RPBA, if there is a causal link between the amendment of the appeal case and that self-contradiction or inconsistency (see point 3.2.3 of the Reasons).
3. If a granted claim allows for several technically meaningful interpretations, it has to be ensured that according to neither of these interpretations the protection conferred by it is extended within the meaning of Article 123(3) EPC (see point 3.3.3 of the Reasons).



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Case Number: T 0837/24 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 8 December 2025**

**Appellant:** EPOS Group A/S  
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**Representative:** Cohausz & Florack  
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**Representative:** Zacco Denmark A/S  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
18 April 2024 concerning maintenance of the  
European Patent No. 2680535 in amended form.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** P. Tabery  
C. Heath

## Summary of Facts and Submissions

- I. The appeal lies from the decision of the opposition division to maintain the patent in amended form in accordance with a "first auxiliary request". The opposition division found that the ground for opposition under Article 100(b) EPC prejudiced the maintenance of the opposed patent as granted.
- II. Oral proceedings before the board were held on 8 December 2025. The final requests of the parties were as follows:
- The appellant-opponent ("opponent") requested that the appealed decision be set aside and that the patent be revoked.
  - The respondent-proprietor ("proprietor") requested that the appeal be dismissed (**main request**). Alternatively, it was requested to maintain the patent in amended form in accordance with one of **auxiliary requests M-A or M-B**, both filed with letter dated 14 November 2025, or **auxiliary requests 1 to 5**, filed with the written reply to the statement of grounds of appeal.

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

- III. Claim 1 of the **main request** (patent as maintained) reads as follows:

"A method of providing presence information for use in a personal communications system comprising a

headset (2) and an interface unit (21), the interface unit (21) comprising:

- a computer interface (32) for connecting the interface unit (21) to a client computer (1);
- a first transceiver (34) configured to exchange radio signals between the interface unit (21) and a mobile telephone (22) according to a first wireless communication protocol;
- a telephone interface (35) for connecting the interface unit (21) to a desktop telephone (23);

wherein the interface unit is a base station for the headset (2), the headset (2) being a wired or wireless headset, and

wherein the method comprises the steps of:

- providing (101), based on signals from said first transceiver (34), a presence message indicating whether said mobile telephone (22) is involved in a phone call with or without using the headset, or providing (101), based on signals from said telephone interface (35), a presence message indicating whether said desktop telephone (23) is involved in a phone call with or without using the headset (2); and
- transmitting (102) said presence message to said client computer (1) via said computer interface (32)."

IV. Claim 1 of **auxiliary request M-A** differs from claim 1 of the main request in that the "providing" steps now read as follows (proprietor's underlining, deletions not shown):

"providing (101), based on signals from said first transceiver (34), a presence message indicating whether said mobile telephone (22) is involved in a phone call, said mobile telephone (22) being

involved in the phone call with or without using the headset (2), or providing (101), based on signals from said telephone interface (35), a presence message indicating whether said desktop telephone (23) is involved in a phone call, said desktop telephone (23) being involved in the phone call with or without using the headset".

- V. Claim 1 of **auxiliary request M-B** differs from claim 1 of the main request in that the "providing" steps now read as follows (proprietor's underlining, deletions not shown):

"providing (101), based on signals from said first transceiver (34), a presence message indicating whether said mobile telephone (22) is involved in a phone call, the mobile telephone being involved in the phone call directly without using the headset (2), or providing (101), based on signals from said telephone interface (35), a presence message indicating whether said desktop telephone (23) is involved in a phone call, independently of whether the headset (2) is used for the phone call or not".

- VI. Claim 1 of each of **auxiliary requests 1, 3 and 5** includes the same "providing" steps of claim 1 of the main request.

- VII. Claim 1 of each of **auxiliary requests 2 and 4** differs from claim 1 of the main request in that, *inter alia*, the "providing steps" have been replaced with the following clause:

"providing (101), based on signals from said first transceiver (34) or said telephone interface (35),

a presence message indicating whether said mobile telephone (22) or said desktop telephone (23) is involved in a phone call with or without using the headset (2)".

## **Reasons for the Decision**

1. The opposed patent concerns the delivery of user-related "presence information" in computer softphone applications to a "presence server". It is an object of the patent to provide a solution to the problem that, if the user is busy speaking on a mobile telephone or a desktop telephone, the presence information obtained from the presence server regarding this user falsely indicates that the user is available.

2. Main request

The main request is identical to the "first auxiliary request" maintained by the opposition division.

2.1 Claim 1 of the **main request** includes the following features (board's feature labelling):

- F1 A method of providing presence information for use in a personal communications system comprising a headset and an interface unit,
- F1.1 the interface unit comprising:
  - F1.1.1 a computer interface for connecting the interface unit to a client computer;
  - F1.1.2 a first transceiver configured to exchange radio signals between the interface unit and a mobile telephone according to a first wireless communication protocol;

- F1.1.3 a telephone interface for connecting the interface unit to a desktop telephone;
- F1.2 wherein the interface unit is a base station for the headset,
  - F1.2.1 the headset being a wired or
  - F1.2.2 wireless headset, andwherein the method comprises the steps of:
  - F1.3 providing, based on signals from said first transceiver, a presence message indicating whether said mobile telephone is involved in a phone call
    - F1.3.1 with or without using the headset, or
  - F1.4 providing, based on signals from said telephone interface, a presence message indicating whether said desktop telephone is involved in a phone call
    - F1.4.1 with or without using the headset; and
  - F1.5 transmitting said presence message to said client computer via said computer interface.

2.2 *Opponent's objection under Article 123(2) EPC*

- 2.2.1 With its submission dated 19 January 2024 (cf. section 3), filed in response to the opposition division's communication under Rule 115(1) EPC, the opponent raised for the first time an objection under Article 123(2) EPC against **features F1.3.1 and F1.4.1**. It was pointed out that the limitation "*with or without using the headset*" included in those features had been added to claim 1 during the examination proceedings and did not find literal basis in the application as filed. The opponent further argued that claim 1 encompassed,

as one alternative, a claim construction (called "**opponent's claim construction**" henceforth) according to which the "presence message" actually contained specific information whether or not a "headset" was used in the "phone call". This configuration, however, was not directly and unambiguously supported by the original application. Rather, the original documents only disclosed that the "presence message", i.e. indicating that the respective telephone is busy, was generated irrespective of whether the headset was used or not. Consequently, the incorporation of those features did not comply with Article 123(2) EPC.

2.2.2 The above added-matter objection against the **patent as granted** (the then "main request") was not admitted into the opposition proceedings by the opposition division with the following reasoning (cf. Reasons 4.2):

"The Opposition Division notes that the wording of the claims is clear and is readily construed as meaning 'involved in a phone call *regardless of the use of the headset*'. The Opposition Division *prima facie* sees no reasons to read this feature otherwise and thus decides not to admit this late filed ground of opposition."

Thus, the opposition division had only conducted a cursory, *prima facie* assessment of compliance with Article 123(2) EPC. Also the minutes of the oral proceedings before the opposition division provide evidence of this non-admittance of the added-matter objection into the opposition proceedings (see item 2.4: "*The chairperson communicated to the parties that the opposition division decided not to admit the new ground of opposition*").

2.2.3 The decision under appeal indicates the following statement with respect to the **first auxiliary request** (cf. Reasons 6.2):

"The Opposition Division is of the opinion that the subject-matter of claims 1 and 7 of the first auxiliary request are both compliant with the requirement of Article 123(2) EPC [...] for the same reasons as already provided in the context of the claims 1 and 7 of the patent".

Hence, this conclusion, as advocated by the opponent during the hearing before the board, gives the impression that the opposition division conducted an assessment on added matter in full - without, however, providing a different (i.e. a full) reasoning on that issue.

2.2.4 Yet, since compliance of auxiliary request 1 could not have been established without admitting the respective objection with respect to the then "main request", the decision under appeal is manifestly inconsistent. As the minutes of the oral proceedings before the opposition division state the very same facts (see point 2.2.2 above), it cannot be determined with certainty whether or not the opposition division indeed admitted the opponent's late-filed objection into the opposition proceedings.

2.2.5 Irrespective of this inconsistent and enigmatic approach taken by the opposition division, both the opponent and the proprietor addressed and discussed the added-matter issue in full in their statement of grounds of appeal (cf. section 3) and written reply thereto (cf. pages 1 to 3 dealing with that objection) - rather than addressing the opposition division's

apparent non-admittance decision under formal grounds, for example, in view of Article 12(6), first sentence, RPBA.

2.2.6 To ensure the parties' right to be heard, the board, at the oral proceedings before it, had thus first to discuss and decide on the admittance of the late-filed objection under Article 123(2) EPC.

2.3 *Admittance of the objection under Article 123(2) EPC*

2.3.1 The opponent argued that, when performing its *prima facie* assessment, the opposition division had misinterpreted the wording of claim 1. The opposition division should have accepted the "opponent's claim construction" as being technically meaningful, if not outright the most logical interpretation. Then, the high relevance of the late-filed objection would have been obvious.

2.3.2 The board concurs with the opponent that the "opponent's claim construction" is technically meaningful, and when so construed, it was not contested by the proprietor that there was no basis in the application as filed. In consequence, the late-filed objection is indeed *prima facie* highly relevant to this appeal case and both parties already discussed that issue in full (see point 2.2.5 above). The parties were thus in a position to present their full case on this issue.

2.3.3 The proprietor noted that the opponent had not even requested, during the appeal proceedings, admittance of the non-admitted objection under Article 123(2) EPC.

2.3.4 In that regard, the board considers that, since the appealed decision was not clear as to whether or not the added-matter objection had been admitted (see point 2.2.3 above), the opponent may have reasonably assumed that the objection was part of the proceedings as is evidenced by the opponent's elaborate submissions on this issue.

2.3.5 Moreover, the proprietor argued that this specific objection had only been raised with respect to the former "main request", but not with respect to the then "first auxiliary request", i.e. the present main request.

In that context, as to the features which the opponent's late-filed objection under Article 123(2) EPC pertains to, the board considers that at least **features F1.3 and F1.3.1** are effectively identical in both claim requests. Therefore, the late-filed objection is considered to apply equally to the former "main request" and to the former "first auxiliary request".

2.3.6 Lastly, the proprietor submitted that the opposition division had based its *prima facie* assessment of the late-filed objection on an interpretation of claim 1 which had initially also been accepted by the opponent.

The board notes in that regard that the opponent has presented its claim interpretation as a "*second, alternative claim construction*" in its written submissions. The board recalls that claim interpretation as such is a matter of law and may change as the proceedings evolve (see also **R 25/22**, Reasons 12 or **R 14/23**, Reasons 7). Moreover, the "opponent's claim construction" presents itself as

technically meaningful to the board (see point 2.4.3 below), and a technically meaningful claim interpretation should not be ignored by a deciding body, let alone be dismissed out of hand, as the opposition division seems to have done.

2.3.7 In view of the above, regardless of whether the opposition division committed an "error" when exercising its discretion within the meaning of Article 12(6), first sentence, RPBA and irrespective of whether the added-matter objection was indeed admitted by the opposition division into the *opposition* proceedings (see points 2.2.2 to 2.2.6 above), the board decided that at least the "circumstances of the appeal case" justify admitting the late-filed objection under Article 123(2) EPC into the *appeal* proceedings.

#### 2.4 *Interpretation of claim 1*

2.4.1 In its decision under appeal, the opposition division construed the expression "*with or without using the headset*" of **features F1.3.1 and F1.4.1** as meaning that the respective telephone is involved in a phone call "*regardless of the use of the headset*". In line with the proprietor's pleadings, this was supported by page 8, line 31 to page 9, line 15, of the description as filed. The proprietor argued persistently at the hearing before the board, by referring to Article 69(1) EPC and decision **G 1/24**, that this interpretation was the only technically sensible and thus "correct" one in view of the patent description and drawings. This was supported by the conclusions of both the examining division and the opposition division.

2.4.2 The board considers that this interpretation constrains the "presence message" to only indicating an ongoing

"phone call". Yet, doing so amounts virtually to ignoring **features F1.3.1 and F1.4.1** altogether. This, however, does not constitute a good-faith interpretation of the claim, since a technically meaningful feature would then be omitted: When construing a claim, the skilled reader typically makes use of a "mind willing to understand" (as invoked by the proprietor). Therefore, a technical meaning is typically given to each claim feature when construing the subject-matter of a claim in an objective manner (see e.g. **T 423/23**, Reasons 2.1.3 and **T 10/22**, Reasons 2.3).

- 2.4.3 The board concurs with the opponent that the wording of claim 1 allows for the "opponent's claim construction" where the "presence message" contains **specific information** (e.g. via a message flag) whether or not the "headset" is used for the respective "phone call". The board considers this to be a technically meaningful interpretation of the formulation under scrutiny, as it gives a *technical* meaning to each feature of claim 1.

The board is mindful to add that the "opponent's claim construction" is not the only interpretation that can be given to the claim, and that it is also possible to interpret the claim in the way it was interpreted by the opposition division. Yet, this interpretation, even if supported by the description, ignores two technical features of claim 1 and can thus not claim to be the only or authoritative construction given to the claim. The "opponent's claim construction" thus being equally valid, if not preferable, must therefore also be considered when determining compliance with Article 123(2) EPC.

2.5 *Added subject-matter (Article 123(2) EPC)*

2.5.1 The original description fails to disclose the combination of **features F1.3 and F1.3.1** of claim 1 according to the "opponent's claim construction" (see point 2.2 above). Notably, the aspect of an indication whether the "phone call" is actually performed by the "use of a headset" is not derivable from the description as filed. According to page 9, lines 6-8,

"the determined presence message may also be able to indicate that the user is busy in a telephone call **if** e.g. the mobile phone 22 is used directly, i.e. **without** using the headset 2 for the call" (board's emphasis).

Due to the "if" clause, this teaches that the "busy" indication is sent on condition that no headset is used, but not that specific information with respect to the "use of a headset" is included in that indication. Moreover, according to the original teaching, the same indication is also sent if a headset is used (see page 8, lines 16-20, in combination with page 9, lines 4 and 5). Therefore, the proprietor's arguments fail to convince the board.

2.5.2 Likewise, based on the "opponent's claim construction", the original description fails to disclose the combination of **features F1.4 and F1.4.1** of claim 1. Rather, according to page 9, lines 5-15, an indication is provided "*independently of whether the headset is used for the call or not*" in the case of a "desktop telephone". Again, it cannot be derived directly and unambiguously that the disclosed indication comprises specific information regarding the "use of the headset". Therefore, the subject-matter of claim 1

extends beyond the content of the application as filed (Article 123(2) EPC).

- 2.5.3 During the oral proceedings before the board, the proprietor invited the board to adopt a claim construction (the "proprietor's claim construction" also adopted by the opposition division) that made the claim compliant with Article 123(2) EPC, insinuating that where several claim interpretations were possible, the board should adopt an interpretation that made the claims compliant with the EPC. The board is aware that a rule to interpret a legal document in a manner compliant with the respective law may find its justification in the realm of *contracts* where it can be assumed that the drafter wanted to produce a law-compliant (valid) rather than an invalid document not compliant with the respective legal provisions. But in the field of *patents*, the legal document is first and foremost one that contains technical information in that the drafter discloses a technical teaching. A patent, and specifically a claim, therefore has to be interpreted according to the technical information it provides, and all interpretations that are technically valid must be considered as technically meaningful interpretations, and neither of these interpretations may extend beyond the content of the application as filed within the meaning of Article 123(2) EPC. There is however no indication in Article 69(1) EPC or in decision **G 1/24** that "using", "consulting" or "referring to" the description and drawings would mandate a claim interpretation that necessarily complies with Article 123(2) EPC, irrespective of whether that interpretation is preferable or more likely (see also **T 405/24**, Reasons 1.2.3, and the decisions cited therein).

2.6 In view of the above, the main request is not allowable under Article 123(2) EPC.

3. *Auxiliary requests M-A and M-B*

3.1 **Auxiliary requests M-A and M-B** were filed by the proprietor in reaction to the board's preliminary opinion issued under Article 15(1) RPBA. Their admittance therefore is at the board's discretion under Article 13(2) RPBA.

3.2 *Admittance (Article 13(2) RPBA)*

3.2.1 As to the presence of "exceptional circumstances", the proprietor submitted that it was faced with a new situation regarding the teaching of the application as filed, page 9, lines 5-15, resulting in added matter as regards claim 1. This particular situation had not previously been discussed between the parties.

In that context, the board has to recall that a party prevailing in opposition proceedings is not relieved from its duty to timely prepare its case for the event of subsequent appeal proceedings. Indeed, each party should take into account that a Board of Appeal may depart from the preliminary view or decision issued by the first-instance department and adopt an opposing view (see e.g. **T 614/21**, Reasons 3.2 or **T 764/16**, Reasons 3.3.2), in particular when it comes to claim construction being a matter of law (cf. point 2.3.6 above).

3.2.2 However, the board concurs with the proprietor that it could not be objectively taken from the appealed decision whether or not the added-matter objection was admitted into the opposition proceedings, i.e. whether

it was assessed *in full* or only in a *prima facie* manner.

3.2.3 The board is not convinced by the opponent's argument that the decision under appeal was clear as to the aspect that the then "first auxiliary request" had been fully examined with respect to the requirement of Article 123(2) EPC. Rather, the decision is ambiguous and erratic in this aspect (see points 2.2.2 and 2.2.3 above). The board holds that a self-contradicting or inconsistent decision of an opposition division may in itself constitute "exceptional circumstances" within the meaning of Article 13(2) RPBA. Furthermore, there is also a causal link between the filing of auxiliary requests M-A and M-B, i.e. the amendment of the proprietor's appeal case, and the contradictory information as contained in the decision under appeal.

3.2.4 The board thus decided to admit auxiliary requests M-A and M-B into the appeal proceedings in view of these exceptional circumstances (Article 13(2) RPBA).

3.3 *Extension of the scope of protection (Article 123(3) EPC)*

3.3.1 The board concurs with the opponent that claim 1 of auxiliary requests M-A and M-B extends the protection conferred by the patent as granted. The shifting of scope is caused by the fact that the specific "presence message" indicating whether a "headset is used" is no longer required. Such a "presence message" is however a mandatory feature of claim 1 as granted according to the "opponent's claim construction".

The "use" of the underlying description for claim interpretation purposes, as mandated by Article 69(1)

EPC when assessing the matter of extension of scope, does not alter that conclusion either. This is because, as the opponent correctly submitted, the relevant teaching of the patent description leaves it open whether the "presence message" contains the specific information about the "use of a headset" (see also point 2.5.1 above). The teaching that the "presence message" may indicate that a user is busy or active in a telephone call according to page 9, lines 5-15 of the description as filed does not imply any further information on that issue.

- 3.3.2 In this regard, the proprietor argued that the amendment simply removed one out of the two possible claim interpretations. Since removing an option led to a narrower scope, claim 1 was compliant with Article 123(3) EPC for that reason alone.
- 3.3.3 The board disagrees. What is actually removed by the respective amendments is not a claimed *alternative*, but an alternative *claim construction*. And in this regard, by analogy, the same applies to compliance with Article 123(3) EPC as has been set out above for the compliance with Article 123(2) EPC: If a granted claim allows for several technically meaningful interpretations, it has to be ensured that according to neither of these interpretations the protection conferred by it is extended. In that context, it is immaterial which of these technically meaningful interpretations may be preferable or more likely. In the present case, on the basis of the "opponent's claim construction", a mandatory feature of claim 1 as granted has been removed. This has not been contested as such by the proprietor. Hence, claim 1 of auxiliary requests M-A and M-B indeed extends the scope of protection vis-à-vis claim 1 as granted.

3.4 In view of the above, auxiliary requests M-A and M-B are not allowable under Article 123(3) EPC.

4. *Auxiliary requests 1 to 5*

4.1 Auxiliary requests 1 to 3 and 5 were filed for the first time on appeal, whereas auxiliary request 4 is identical to auxiliary request 4 filed during the opposition proceedings.

4.2 With respect to claim 1 of each of **auxiliary requests 1, 3 and 5**, the added-matter objections raised in point 2.5 above are equally applicable. No further comments were made by the proprietor.

4.3 Having regard to claim 1 of each of **auxiliary requests 2 and 4**, it is common ground that the amended wording is broader than the formulation used in features F1.3 to F1.4.1 of claim 1 of the main request. Therefore, the added-matter objections raised in point 2.5 above equally apply. No further comments were provided by the proprietor.

4.4 In view of the above and irrespective of admittance considerations, none of auxiliary requests 1 to 5 is allowable under Article 123(2) 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