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**Datasheet for the decision
of 18 September 2025**

Case Number: T 1481/24 - 3.5.04

Application Number: 14868498.8

Publication Number: 3077889

IPC: H04N5/50, H04N5/445, H04N5/45,
H04N21/431, H04N21/482

Language of the proceedings: EN

Title of invention:

USER INTERFACE TECHNIQUES FOR TELEVISION CHANNEL CHANGES

Applicant:

Opentv, Inc.

Headword:

Relevant legal provisions:

EPC Art. 122, 108
EPC R. 136

Keyword:

Admissibility of appeal - statement of grounds - filed within
time limit (no)
Re-establishment of rights - isolated mistake within a
satisfactory system for monitoring time limits (no)

Decisions cited:

T 2336/10, T 0580/06, T 2253/13

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1481/24 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 18 September 2025

Appellant: Opentv, Inc.
(Applicant) 275 Sacramento Street
San Francisco, CA 94111 (US)

Representative: Mewburn Ellis LLP
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Counterslip
Bristol BS1 6BX (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 15 July 2024
refusing European patent application
No. 14868498.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman B. Willems
Members: B. Le Guen
W. Ungler

Summary of Facts and Submissions

- I. The appeal of the applicant is against the decision of the examining division dated 15 July 2024 refusing European patent application No. 14 868 498.8.
- II. Notice of appeal was filed on 12 September 2024.
- III. By communication of 3 January 2025, the Board informed the appellant of the failure to file the statement of grounds of appeal within the time limit of Article 108, third sentence, EPC.
- IV. By letter of 3 March 2025, the appellant requested re-establishment into the time limit for filing the statement of grounds of appeal. On the same day, the appellant paid the fee for the request for re-establishment of rights and completed the omitted act, i.e. filing the statement of grounds of appeal.
- V. As regards the failure to submit the statement of grounds to the EPO, the appellant brought forward in essence that this was a "simple human error" of an assistant of the appellant's representative. The appellant explained this error by the fact that the assistant was working on a further case at the same time in which a statement of grounds of appeal was also to be electronically sent to the EPO using the online filing software eOLF. The assistant had probably mixed up the cases and had assumed that she had already sent the files (i.e. the statement of grounds of appeal and its annexes) of the current case to the EPO. Because of this confusion, the assistant saved Form 1038 and the EPO's acknowledgement of receipt for the concurrently handled case in the current file. (Comment from the

Board: The appellant's detailed arguments are addressed in the Reasons.)

- VI. By communication under Article 15(1) of the Rules of Procedure before the Boards of Appeal (RPBA), the appellant was informed of the Board's preliminary opinion on the request for re-establishment of rights. Furthermore, the appellant was informed that the discussion during the oral proceedings would be limited to that request.
- VII. By letter of 22 August 2025, the appellant replied to the Board's communication under Article 15(1) RPBA.
- VIII. Oral proceedings were held on 18 September 2025.

Reasons for the Decision

- 1. As the contested decision is dated 15 July 2024, the four-month period for filing the statement of grounds of appeal expired on 15 November 2024. The statement of grounds was not submitted within the time limit specified in Article 108, third sentence, EPC. A rejection of the appeal as inadmissible (see Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC) could therefore only be avoided if the request for re-establishment of rights was granted.
- 2. Admissibility of the request for re-establishment of rights
 - 2.1 Pursuant to Rule 136(1) EPC, a request for re-establishment of rights must be filed within two months of the removal of the cause of non-compliance with the period. According to the appellant, the cause of non-compliance consisted in the representative's lack of

awareness that the statement of grounds had not been submitted via the eOLF software to the EPO. Furthermore, the appellant pointed out that the cause of non-compliance had been removed when the representative became aware of the EPO's communication of 3 January 2025, informing the appellant of the failure to file the statement of grounds of appeal within the time limit of Article 108, third sentence, EPC.

- 2.2 The Board sees no reason to doubt this. Thus, the two-month period for filing the request for re-establishment of rights expired on 3 March 2025. The request for re-establishment of rights was therefore submitted within the time limit of Rule 136(1) EPC. As the fee for the request for re-establishment was paid and the omitted act (submission of the statement of grounds of appeal) was completed in due time, the request for re-establishment of rights meets the requirements of Rule 136(1) and (2) EPC.
3. Merits of the request for re-establishment of rights
 - 3.1 Under Article 122 EPC, the request for re-establishment of rights is only to be allowed if the applicant was unable to observe the time limit in spite of having taken all due care required by the circumstances.
 - 3.2 First, the Board has no concerns as regards the appellant's submissions that the responsible representative:
 - a) prepared the statement of grounds of appeal in good time
 - b) signed the final versions of the corresponding files (statement of grounds of appeal, including auxiliary

requests as annexes) to be sent to the EPO using the eOLF software

c) instructed an assistant (Ms Pellow) on 6 November 2024 to send the files to the EPO using the eOLF software

and that the representative's assistant (Ms Pellow):

d) did not submit the statement of grounds of appeal via eOLF to the EPO

3.3 As regards the assistant's failure to submit the statement of grounds to the EPO, the appellant brought forward that this was a "simple human error". The appellant explained this error by the fact that the assistant was working on a further case at the same time in which a statement of grounds of appeal was also to be sent via eOLF. She had probably mixed up the cases and had assumed that she had already sent the files (i.e. the statement of grounds of appeal and its annexes) of the case in hand to the EPO. Because of this confusion, Ms Pellow saved Form 1038 and the EPO's acknowledgement of receipt for the concurrently treated case in the current file (see Appendix 9 to the request for re-establishment of rights, point 12: "*I saved again the 1038 and e-filing receipt from the unrelated case to the file*"). According to the standard procedure of the representative's office, Ms Pellow prepared a draft email which was meant to inform the applicant's US-based attorneys about the filing of the statement of grounds of appeal. Attached to this email was the wrong acknowledgement of receipt but the correct statement of grounds of appeal (see Appendix 9 to the request for re-establishment of rights, point 13). This draft email was sent to Ms Pedani, who checked the content of the email but did not notice that the wrong acknowledgement of receipt was attached to that email (see Appendix 10 to the request for re-establishment of rights, point

10: *"I also checked the content of the attachment. However, regrettably, I did not notice that the enclosed filing receipt did not relate to the Application but in fact to another, different case."*). On 8 November 2024, the email (with annexes) was sent to the applicant's US-based attorneys. On the same day, the file was confirmed as "complete" by the so-called Diary Keeper, Ms Simon, who was not responsible for checking the content of the email.

3.4 Again, the Board has no reason to doubt the above allegations, which are supported by declarations from Ms Pellow, Ms Pedani and Mr Ferber (see Appendices 9 to 11 to the request for re-establishment of rights).

3.5 As regards whether the criterion of all due care has been met in the current case, the appellant stated in essence that the failure to comply with the time limit was *"the result of an isolated mistake in Mewburn's otherwise well functioning system"* (see page 13, point 6 of the request for re-establishment of rights). As to the qualifications of the assistants involved, the appellant stated that *"Ms Pellow and Ms Pediani were perfectly suitable to act as administrative assistants in the present case. Ms Pellow has more than 20 years' experience in patent work at the EPO, and has filed countless submissions successfully using eolf (not least, EP21171517.2). Ms Pediani, similarly, has more than 10 years' experience and is one of the longest serving paralegals within Mewburn Ellis"* (point 6 of the request for re-establishment of rights, page 14).

3.6 Under established case law, all due care is considered to have been exercised if non-compliance with a time limit results from an isolated mistake within a normally satisfactory monitoring system (see Case Law

of the Boards of Appeal of the European Patent Office, 11th edn., 2025 (Case Law), III.E.5.4.). An isolated mistake by an assistant that occurs in a normally satisfactory system is excusable. Furthermore, it is well established that a professional representative may entrust routine tasks to an assistant if (i) a suitable person is chosen for that purpose, (ii) he or she is given proper instructions and (iii) the representative exercises reasonable supervision over the work of the assistant (T 2336/10, Reasons 15, quoting from J 5/80, OJ 1981, 343, paragraph 7).

- 3.7 In view of the supporting evidence filed, the Board does not doubt the suitability and qualifications of the assistants involved in general. Nevertheless, as a rule, only an isolated error of an assistant within a normally satisfactory system can be excused under established case law of the Boards of Appeal.
- 3.8 Considering the appellant's submissions, the following series of errors occurred in the case at hand.
- The assistant uploaded an eOLF acknowledgement of receipt to the firm's electronic file which, however, belonged to another file. Due to that error, she did not submit the statement of grounds to the EPO in the current file.
 - The assistant confirmed in the computerised system of the representative's office that the statement of grounds of appeal had been submitted to the EPO.
 - The assistant prepared a draft email informing the US-based attorneys of the filing of the statement of grounds of appeal and annexed the wrong eOLF acknowledgement of receipt.
 - Another assistant, who was supposed to check the aforementioned email, did not notice that the wrong

eOLF acknowledgement of receipt was annexed to the aforementioned email.

- 3.9 The appellant argued that only one error was causal for the failure to submit the statement of grounds of appeal to the EPO, i.e. the uploading of an acknowledgement of receipt to the firm's electronic file, which, however, belonged to another file. The other errors were merely consequential errors based on a false premise which were not causal for the failure to meet the time limit and should not play a role for the question as to whether the requirement of an isolated error was met.
- 3.10 However, the question of whether there was an isolated error can be left open as the appellant has not convincingly demonstrated that a normally satisfactory system was in place for the handling of the EPO's electronic acknowledgement of receipt. In that regard, the party requesting re-establishment of rights bears the burden of making the case and proving that the requirements are met (see Case Law, III.E.5.2).
- 3.11 In line with the case law of the Boards, it is essential that the assistants to whom the tasks are assigned are given the appropriate instructions and supervision (see Case Law, III.E.5.5.4b)). Only if these requirements are met can it be assumed that a system is normally satisfactory.
- 3.12 The sequence of mistakes described under point 3.8 above casts doubt on whether a normally satisfactory system was in place in the representative's office as far as the issue of checking the acknowledgement of receipt is concerned. It is undisputed that a check of the acknowledgement of receipt was not carried out on

several occasions. Furthermore, the failure to carry out a check was not limited to one assistant; a second assistant, who was supposed to carry out a cross-check according to the system in place in the representative's office, also failed to do so (as argued by the appellant; see, for instance, request for re-establishment of rights, page 16: "*In the present case, by extreme misfortune, each of these **cross-checks** failed to identify the original error, of a response which had been approved and signed not actually being sent.*"; emphasis added by the Board). This is a strong indication that both assistants were not aware of the importance of the eOLF acknowledgement of receipt for determining whether the electronic submission was successful.

- 3.13 Thus, the Board has doubts as to whether there:
- (a) were sufficient instructions in place highlighting the importance of the acknowledgement of receipt and setting out the procedure to be followed for checking it
 - (b) was reasonable supervision of the work of the assistants

- 3.14 First, when sending documents via eOLF, the receipt messages automatically sent by the system are crucial for assessing whether the electronic transmission was successful. This is essential, as even brief connection problems or network instability can cause document transmission to fail. Reference can also be made to the case law on the significance of the transmission report for fax transmissions, which concerns a similar problem (see T 580/06, Reasons 1.4.1 to 1.4.3 and 1.5). Therefore, it is crucial to ensure that the eOLF acknowledgement of receipt is received and, if several files are being worked on simultaneously, that the

respective acknowledgement is assigned to the correct file. To facilitate the correct allocation, the acknowledgement of receipt includes the corresponding application number at the top. Furthermore, the acknowledgement of receipt also contains the list of documents submitted to the EPO, so the completeness of the transmission can also be checked very easily.

- 3.15 As an aside, with regard to the appellant's argument that, under the case law, the failure to take into account a fax transmission report indicating an unsuccessful transmission was not considered prejudicial to a request for re-establishment of rights, this general conclusion cannot be drawn from decision T 2253/13 cited by the appellant (see page 8 of the appellant's letter of 22 August 2025). In Reasons 1.3 (also cited by the appellant), the Board pointed out as follows: "*It could not reasonably be required that an independent cross-check should be performed for checking the fax report **when the relevant documents were also sent by confirmation mail and did indeed arrive at the EPO.***" (emphasis added by the Board).
- As explicitly set out, this further condition was decisive for the Board's conclusion.

- 3.16 Regarding whether sufficient instructions were provided to the assistants, the appellant referred to a passage in a document that all employees in the representative's office who have received training must sign (see appellant's letter dated 22 August 2025, page 9). The document states, *inter alia*, the following.
- "*If the time limit is an inextensible one, ensure that the documents have actually reached the destination in time.*"

- *"Do not send a diary response form saying that an action has been taken until you have personally verified this [sic] it has been taken."*

The appellant also cited a passage of the training manual, which reads as follows:

"There is a risk of failure with almost all kinds of communication. If missing a deadline would be fatal we must be certain that the necessary action has actually been received at its intended destination.

If sending things by e-filing this can be determined by the filing receipt which is generated as soon as something is sent. [...] *If sending things by fax or e-mail we will need to take further action to confirm receipt, e.g., ask for confirmation by return or telephone the recipient, and follow up as necessary to achieve this.*" (Emphasis added by the Board.)

- 3.17 Although the passages cited above indicate that, in the case of e-filing, the acknowledgement of receipt should be used to determine whether documents have been successfully sent, there is a lack of detailed information on how to proceed. No reference is made to the necessity of verifying the content of the acknowledgement of receipt. This is particularly necessary when employees work on several files simultaneously, which is common practice in larger law firms. In the case at hand, the assistant was dealing with two cases simultaneously, each of which required the submission of a statement of grounds of appeal. The assistant submitted the statement of grounds for the concurrently treated file electronically to the EPO and incorrectly saved the downloaded acknowledgement of receipt to the current file in the file system of the representative's office. Without checking the content of the acknowledgement of receipt, the assistant then

entered into the electronic system that the action of sending the statement of grounds to the EPO had been completed. This case clearly shows that when assigning the acknowledgement of receipt to a specific file in the firm's file system, it is necessary to open the file of the acknowledgement of receipt and check (at least) the application number indicated to ensure that it is assigned to the correct file. However, the instructions cited by the appellant do not include such a procedure, which is indispensable for a file system to be satisfactory.

- 3.18 The further issue of whether the assistants were subject to adequate supervision can therefore be left open.
- 3.19 In view of the above, the Board concludes that the appellant has not demonstrated that the representative's office had appropriate instructions in place for handling electronic acknowledgements of receipt. Consequently, it cannot be assumed that the office had a satisfactory system for handling acknowledgements of receipt. The requirement to exercise all due care, as set out in Article 122(1) EPC, has therefore not been met. Consequently, the request for re-establishment of rights must be rejected.
4. For the sake of completeness, the Board would like to address one of the appellant's arguments presented at the oral proceedings, according to which the all due care criterion should not be applied more rigorously to electronic submissions of documents than to submissions via conventional postal services. The appellant argued that for routine tasks, such as the submission of paper documents via conventional postal services, there was -

in accordance with the cited case law of the Boards - no requirement for a cross-check. The Board concurs with this position, on the understanding that the act of enveloping and delivering the document to the post office does not necessitate the presence of a second person to either observe the assistant or accompany them to the post office. This applies *mutatis mutandis* to the electronic transmission of documents. The act of pushing the "send" button to dispatch the electronic document does not require the presence of another person to verify this action. Not even the assignment of the acknowledgement of receipt to a specific file in the firm's filing system requires, in the Board's view, a cross-check in the sense of a verification by a second person. Contrary to the appellant's submission, the Board therefore does not impose any stricter criteria for the electronic submission of documents.

- 4.1 The electronic filing system has the advantage of generating an immediate acknowledgement of receipt upon transmission of documents to the EPO, thus enabling real-time verification of successful transmission. However, it is clear that a file management system can only be considered satisfactory if this straightforward and advantageous feature of online filing is effectively used as standard procedure.

Order

For these reasons it is decided that:

1. The request for re-establishment of rights under Article 122 EPC is refused.
2. The appeal is rejected as inadmissible.

The Registrar:

The Chairwoman:



L. Stridde

B. Willems

Decision electronically authenticated