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D E C I S I O N
of 10 August 2001

Case Number: T 0705/99 - 3.5.2

Application Number: 92104694.2

Publication Number: 0504843

IPC: G07B 17/02

Language of the proceedings: EN

Title of invention:

Metering system with remotely resettable time lockout

Patentee:

Pitney Bowes Inc.

Opponent:

Neopost Ltd.

Francotyp-Postalia Aktiengesellschaft & Co.

Société Secap

Headword:

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Relevant legal provisions:

EPC Art. 111(1), 104(1)

Keyword:

"New prior art cited on appeal - remittal to first instance
requested by proprietor and opponents without oral
proceedings"

"Apportionment of costs (no)"

Decisions cited:

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Catchword:

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Case Number: T 0705/99 - 3.5.2

D E C I S I O N
of the Technical Board of Appeal 3.5.2
of 10 August 2001

Appellant:
(Proprietor of the patent) Pitney Bowes Inc.
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Connecticut 06926-0700 (US)

Representative:
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Appellant:
(Opponent 01) Neopost Ltd.
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Representative:
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Appellant:
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Representative:
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Other party: Société SECAP
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Representative: Santarelli, Luc
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 18 May 1999
concerning maintenance of European patent
No. 0 504 843 in amended form.

Composition of the Board:

Chairman: W. J. L. Wheeler
Members: M. Ruggiu
P. Mühlens

Summary of Facts and Submissions

- I. The proprietor, opponent 01 and opponent 02 have appealed against the decision of the opposition division concerning the maintenance of European patent No. 0 504 843 in amended form in accordance with the proprietor's first auxiliary request.

- II. The appellants opponent 01 and opponent 02 submitted various arguments based on Article 123 EPC and alleged the absence of an inventive step. They cited three new documents of the state of the art:

EP-A-0 207 492,

EP-A-0 376 573 and

GB-A-2 233 937.

- III. In the letter dated 19 March 2001, the proprietor tended to agree that document GB-A-2 233 937 was more pertinent than all documents previously cited in the case and requested that the case be remitted to the opposition division, so that the new document may be considered at two levels of jurisdiction. Furthermore the proprietor requested an award of costs.

- IV. The board issued a communication indicating that it was reluctant to appoint oral proceedings (which had been requested by all the appellants) and would prefer to remit the case to the first instance without holding oral proceedings so as to avoid unnecessary costs to the parties.

- V. In reply to the communication of the board, all three appellants withdrew their requests for oral proceedings on the condition that the case be remitted to the first instance to examine the newly cited documents.
- VI. Opponent O3 has not made any submission during the appeal proceedings.

Reasons for the Decision

1. The appeals are admissible.
2. The three appellants and the board agree that the three newly cited documents are more relevant than the documents considered by the opposition division in the decision under appeal and that remittal of the case to the first instance is appropriate, so that these new documents can be considered at two instances.
3. In this situation, the board considers it appropriate to exercise its power under Article 111(1) EPC to remit the case to the first instance without discussing any of the substantive issues, so as not to preempt the first instance.
4. As the costs of the present appeal have been kept to a minimum, the board considers that no apportionment of costs should be awarded at this stage (cf Article 104(1) EPC). It is a matter for the opposition division to decide upon any request for apportionment of costs that may be made before it.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The request for apportionment of costs is refused.
3. The case is remitted to the first instance for further prosecution.

The Registrar:

The Chairman:

M. Kiehl

W. J. L. Wheeler