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Aktenzeichen / Case Number / N° du recours : J 10/88

Anmeldenummer / Filing No / N° de la demande : 83 903 706.6

Veröffentlichungs-Nr. / Publication No / N° de la publication :

Bezeichnung der Erfindung: Method and apparatus for dynamically selecting
Title of invention: transmitters for communications between a primary
Titre de l'invention : station and remote stations of a data
communication system

Klassifikation / Classification / Classement : H04 B1/00

ENTSCHEIDUNG / DECISION

vom / of / du 13 February 1989

Anmelder / Applicant / Demandeur : Motorola, Inc.

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPU / EPC / CBE Art. 108, Rule 65(1)

Schlagwort / Keyword / Mot clé : "Missing Statement of Grounds"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

European Patent
Office

Office européen
des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number : J 10/88



D E C I S I O N
of the Legal Board of Appeal
of 13 February 1989

Appellant : MOTOROLA, INC.
1303 East Algonquin Road
Schaumburg, Illinois 60196
USA

Representative : Hudson, Peter David
Motorola Ltd.,
Patent and Licensing Operations Europe
Jays Close
Viables Industrial Estate
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Decision under appeal : Decision of the Head of the Formalities Section
(DG 2) of the European Patent Office
dated 20 November 1987 refusing European
Patent Application No. 83 903 706.6 pursuant
to Article 97(1) EPC.

Composition of the Board :

Chairman : P. Ford

Members : L. Mancini
C. Payraudeau

Summary of Facts and Submissions

I. The appeal contests the decision of the Head of the Formalities Section (DG 2) of the European Patent Office dated 20 November 1987 refusing the Euro-PCT application No. 83 903 706.6. On 29 January 1988 the Applicant filed notice of appeal and paid the fee for appeal.

II. After the file was remitted to the Legal Board of Appeal, a communication by the Registry dated 15 July 1988 informed the Appellant that:

"It appears from the file that up until now you have not filed a Statement of Grounds of Appeal.

The time limit for the filing of the Statement of Grounds expired on 30.03.88 (Article 108, third sentence and Rule 78(3) EPC).

Your notice of appeal does not contain anything that could be regarded as a Statement of Grounds.

Pursuant to Rule 65(1) EPC in conjunction with Article 108 EPC, your appeal will, therefore, presumably be rejected as inadmissible (cf. decision T 13/82, OJ EPO 1983, 411). Your attention is also drawn to decision J 22/86, OJ EPO 1987, 280.

You are invited to file observations on this communication within a period of two months if you want to do so."

III. In reply to said communication, the Applicant filed the following observations:

"It is submitted that the Applicant's letter of 29 January 1988 should be regarded as a valid notice of appeal. It is also submitted that no further Statement of Grounds need be filed.

It is pointed out that similar circumstances obtained following the Rule 51(4) communications in European patent applications nos. 81 901 438.2, 82 900 456.3 and 82 901 198.0: in these applications following failure to pay the requisite fees and subsequent refusal, appeal was filed in the same manner as in the present application. Application nos. 81 901 438.2 and 82 900 456.3 were subsequently granted without being referred to the Legal Board of Appeal. Application no. 82 901 198.0 was later submitted to the Legal Board of Appeal: the Board subsequently gave its favourable decision allowing the appeal as case no. J 2/87 and the communication under Rule 51(4) EPC has since been re-issued in this application.

It is strongly requested that the present application be treated in exactly the same manner as the above-quoted earlier applications and as ratified by the Legal Board of Appeal in the above-quoted decision. Therefore, since in the present application all necessary fees have been paid, approval has been given and the requisite translations have been filed, it is requested that the communication pursuant to Rule 51(4) be re-issued and the application be granted."

IV. By a communication dated 11 November 1988 the Board sent to the Appellant the following letter (by registered mail):

"The Board acknowledges receipt of your letter of 7 September 1988.

With regard to your submission that the Applicant's letter of 29 January should be regarded as a valid notice of appeal, it should be understood that your reference to European applications Nos. 81 901 438.2, 82 900 456.3 and 82 901 198.0 as cases of "similar" circumstances does not appear justified or appropriate. Those cases were dealt in accordance with a view of the legal situation taken by the first instance which is not in accordance with J 22/86. As you are aware, the third application could be saved by this Board only by resorting to the principle of good faith in the special circumstances of the case. It does not show that you can subsequently rely on such a case as a precedent. In the present case, you were aware of the decisions J 22/86 and J 2/87 when you filed the appeal: nevertheless, you have elected not to present the necessary statement of grounds.

For these reasons, it would seem highly probable that this Board will be obliged to reject your appeal as inadmissible.

You should be prepared to deal with the points mentioned above during the oral proceedings which are being appointed at your request."

- V. The Appellant filed no observations in response to said communication nor has he filed a request for restitutio in integrum. Moreover on 10 February 1989, the Appellant informed the Registry that he did not intend to appear at the public oral proceedings of 13 February 1989, to which he had been duly summoned, and, as a matter of record, he did not appear.

As no written statement setting out the grounds of appeal has been filed, the appeal has to be rejected as inadmissible (Article 108 EPC in conjunction with Rule 65(1) EPC).

Order

For these reasons, it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

J. Rückerl

P. Ford