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D E C I S I O N
of 4 October 2005

Case Number: T 0402/01 - 3.5.01

Application Number: 94927728.9

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Language of the proceedings: EN

Title of invention:
Data entry systems

Patentee:
Dataquill Limited

Opponent:
ALCATEL

Headword:
Data entry system/DATAQUILL

Relevant legal provisions:
EPC Art. 106, 113, 122
EPC R. 65(1)

Keyword:
"Appeal against a decision of a board of appeal -
inadmissible"
"Application for restitutio in integrum aimed at the revision
of a final decision taken by a board of appeal - inadmissible"
"Request for oral proceedings - refused"

Decisions cited:
G 0001/97

Catchword:



Case Number: T 0402/01 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 4 October 2005

Appellant: ALCATEL
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Respondent: Dataquill Limited
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Representative: Milhench, Mark
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Decision under appeal: Decision of the Technical Board of Appeal
3.5.01 dated 21 February 2005 in re appeal
T 0402/01.

Composition of the Board:

Chairman: S. V. Steinbrener
Members: W. E. Chandler
B. J. Schachenmann

Summary of Facts and Submissions

- I. On 21 February 2005 the Board of Appeal 3.5.01 gave a decision in case T 402/01 revoking European patent No. 0 723 687. On 31 March 2005 the same Board issued a decision correcting the decision of 21 February 2005 in application of Rule 89 EPC by removing an obvious error from point 36 of the reasons of the first decision.

- II. On 3 May 2005 the former respondent/proprietor filed a notice of appeal against the Board's decision T 402/01 of 21 February 2005 and paid the appeal fee. On 13 July 2005 (i.e. after the expiry of the four months' time limit under Article 108 EPC) written statement setting out the grounds of appeal was filed.

- III. The former respondent/proprietor requested that the decision T 402/01 of 21 February 2005 be set aside and that the patent be reinstated. The request was based on alleged procedural violations committed by the Board at the oral proceedings, in particular the violation of the respondent/proprietor's right to be heard pursuant to Article 113 EPC. In the event that the Board did not grant this request, oral proceedings were requested.

- IV. In the event that the appeal was considered as being invalid, it should be treated as a request under Article 122 EPC for restitutio in integrum of the respondent/proprietor's rights under Article 113 EPC.

Reasons for the Decision

1. *Admissibility of the appeal*

1.1 According to Article 106(1) EPC an appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. If an appeal does not comply with Article 106 (as well as Articles 107 and 108 and Rules 1(1) and 64(b) EPC) it shall be rejected as inadmissible pursuant to Rule 65(1) EPC.

1.2 According to the decision G 1/97 of the Enlarged Board of appeal (OJ EPO 2000, 322), decisions of the boards of appeal become final as soon as they are issued (see point 2.a) of the reasons). Thus, there can be no possibility of appeal under Article 106 EPC against these decisions. This is confirmed by the exhaustive list in Article 106(1) EPC of the departments against which an appeal can be filed which does not contain the boards of appeal. Thus, the present appeal filed against a final decision of a board of appeal has to be rejected as inadmissible for this reason alone.

2. *Admissibility of the request for restitutio in integrum*

2.1 If the respondent/proprietor's request is treated as an application for restitutio in integrum under Article 122 EPC (see point IV., *supra*), one of the essential conditions of Article 122(1) EPC according to which an applicant or proprietor had to be unable to "observe a time limit vis-à-vis the European Patent Office" is not met.

2.2 Thus, according to the decision G 1/97 (see point 2.b) of the reasons), such an application cannot be a basis for filing an appeal against a decision of a board of appeal on the ground of violation of a fundamental procedural principle. The present application for restitutio in integrum has therefore to be rejected as inadmissible.

2.3 More generally, according the decision G 1/97 (see headnote I.), any request aimed at the revision of a final decision of a board of appeal and based on the alleged violation of a fundamental principle may not validly be submitted and is to be refused as inadmissible.

3. *Responsibility of Board 3.5.01 to decide on the request for oral proceedings*

3.1 According to the findings of G 1/97 (see point 6 of the reasons and headnote II.) the decision of inadmissibility of requests aimed at the revision of a final decision of a board of appeal is to be issued by the board which took the decision subject of the request for revision. Thus, as in the present case the respondent/proprietor's requests are clearly of the type referred to above, the Board of Appeal 3.5.01 is responsible to decide on them.

3.2 As the requests in question could not be validly filed and must be refused as inadmissible, oral proceedings would prolong the proceedings in a way that would be difficult to reconcile with the requirement for legal certainty. For this reason, the board can issue the decision concerning inadmissibility immediately and

without further procedural formalities (G 1/97, point 6 of the reasons and headnote II.). The request for oral proceedings is therefore refused.

Order

For these reasons it is decided that:

1. The appeal is rejected as inadmissible.
2. The application for restitutio in integrum under Article 122 EPC is rejected as inadmissible.
3. The request for oral proceedings is refused.

The Registrar:

The Chairman:

M. Kiehl

S. Steinbrener