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**Datasheet for the decision
of 15 September 2006**

Case Number: T 0655/06 - 3.5.03

Application Number: 98906058.7

Publication Number: 0958532

IPC: G05B 19/418

Language of the proceedings: EN

Title of invention:

Worldwide marketing logistics network including strategically located centers for frequency programming crystal oscillators to customer specification

Applicant:

Fox Enterprises, Inc.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 108

Keyword:

"Missing statement of grounds"

"Implicit withdrawal of request for oral proceedings"

Decisions cited:

T 0003/90

Catchword:

-



Case Number: T 0655/06 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 15 September 2006

Appellant: Fox Enterprises, Inc.
5570 Enterprise Parkway
Fort Myers, FL 33905 (US)

Representative: HOFFMANN EITLE
Patent- und Rechtsanwälte
Arabellastrasse 4
D-81925 München (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 21 November 2005
refusing European application No. 98906058.7
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: A. Ritzka
R. Moufang

Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division of the European Patent Office refusing European patent application No. 98 906 058.7 filed in the name of Fox Enterprises, Inc. (US). The decision was dispatched by registered letter with advice of delivery to the representative of the applicant on 21 November 2005.

A notice of appeal on behalf of the applicant (appellant) was filed by a letter received on 23 January 2006. The payment of the appeal fee was recorded on the same day. The notice of appeal contains an auxiliary request for oral proceedings. No separate statement of grounds of appeal was filed.

II. By a communication dated 9 May 2006 sent by registered letter with advice of delivery, the registrar of the board informed the representative of the appellant that no statement of grounds had been filed and that it was therefore to be expected that the appeal would be rejected as inadmissible. The appellant was invited to file observations within two months and attention was drawn to the possibility of filing a request for re-establishment of rights under Article 122 EPC.

III. No answer has been given to the registrar's communication within the time limit. In view of the auxiliary request for oral proceedings submitted in the notice of appeal, the registrar of the board called the representative of the appellant on 28 July 2006. The representative declared that the appellant had instructed him not to further prosecute the case.

Reasons for the decision

1. The auxiliary request for oral proceedings made in the notice of appeal has not been explicitly withdrawn. However, the representative of the appellant who had neither filed grounds of appeal nor answered the communication of the registrar of the board of 9 May 2006 informed the registrar during the phone conversation of 28 July 2006 that the appellant had instructed him not to further prosecute the case. Taking furthermore into account that the applicant is a legal person not having its principal place of business within the territory of one of the Contracting States of the EPC and must therefore be represented by a professional representative according to Article 134(1) EPC and that no change of representative has been communicated to the European Patent Office, the board considers that, under the circumstances of the present case, the auxiliary request for oral proceedings has to be considered as implicitly withdrawn. This conclusion is also supported by decision T 3/90 (OJ EPO 1992, 737) according to which a statement of a party that it would not be represented at the oral proceedings should normally be treated as equivalent to a withdrawal of the request for oral proceedings.

2. As no written statement setting out the grounds of appeal has been filed and as the notice of appeal contains nothing that could be regarded as statement of grounds pursuant to Article 108 EPC, 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:

D. Magliano

A. S. Clelland