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**Datasheet for the decision
of 27 June 2007**

Case Number: T 0809/06 - 3.5.01

Application Number: 99305782.7

Publication Number: 1071030

IPC: G06F 17/60

Language of the proceedings: EN

Title of invention:

Communication method and apparatus

Applicant:

Libman, Richard

Opponent:

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Headword:

Communication method / Libman

Relevant legal provisions:

EPC Art. 108 third sentence

EPC R. 65

RPBA Art. 10a(2)

Keyword:

"Grounds of appeal - Inadequate content - Inadmissibility of appeal"

Decisions cited:

J 0022/86, T 0220/83, T 0349/00, T 0597/05

Catchword:

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Case Number: T 0809/06 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 27 June 2007

Appellant: Libman, Richard
10947 E. Lillian Lane
Scottsdale, Arizona 85259 (US)

Representative: Cross, James Peter Archibald
R.G.C. Jenkins & Co.,
26 Caxton Street
London SW1H 0RJ (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 9 December 2005
refusing European application No. 99305782.7
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. Steinbrener
Members: R. R. K. Zimmermann
G. Weiss

Summary of Facts and Submissions

I. The applicant appealed on 16 February 2006 against the decision of 9 December 2005 of the Examining Division on the refusal of the application No. 99305782.7 and paid the relevant appeal fee on the same day. The refusal was based on findings of lack of unity (Article 82 and Rule 30 EPC) and lack of novelty (Article 54 EPC). On 18 April 2006 it submitted the following statement setting out the grounds of appeal:

"Grounds of Appeal

1. Art. 82 & Rule 30 EPC

The subject matter of the claims falls involves [sic!] at least one of the cases covered by Rule 29(2) EPC.

2. Art. 52(2) & (3) EPC

The claims involve at least one feature that does not involve excluded subject matter under Art. 52(2), and therefore do not relate to the excluded subject matter as such (Art. 52(3)).

3. Art. 52(1) & 54 EPC

Neither D1 nor D2 unambiguously discloses all the features of claims 1 and 4, which are therefore novel.

4. Art. 56 EPC

The grounds of the appealed decision refer to 'general knowledge' which has not been substantiated by evidence. In any case, these grounds are obita dicta which do not form part of the grounds of the decision."

- II. In a letter received in facsimile on 8 May 2006 the applicant (appellant) indicated that "we maintain the Applicant's request for Oral Proceedings should the Board not intend to allow our appeal."
- III. With a communication pursuant to Article 110(2) EPC the Board informed the appellant that the appeal seems to be inadmissible. The grounds of appeal as filed did not appear to comply with the requirements of Article 108 EPC and Article 10a(2) RPBA (Rules of Procedure of the Boards of Appeal).
- IV. In response to this communication, the appellant withdrew its request for oral proceedings and indicated the filing of a divisional application without further discussing the issue of admissibility of the appeal.

Reasons of the decision

1. According to Article 108 EPC, third sentence, a written statement setting out the grounds of appeal must be filed within four months after the date of notification of the decision. Article 10a(2) RPBA specifies that the statement of grounds of appeal shall contain a party's complete case. It shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts, arguments and evidence relied on.
2. If the appellant submits that the decision under appeal is incorrect, the statement setting out the grounds of appeal must enable the Board to understand immediately

why the decision is alleged to be incorrect and on what facts the appellant bases its arguments, without first having to make investigations of their own (see T 220/83, OJ EPO 1986, 249, confirmed by numerous decisions and more recently in T 597/05 of 31 January 2006).

3. The statement filed on 18 April 2006 is insufficient to meet these requirements since the grounds of appeal submitted amount to no more than the mere assertion that the findings of the decision under appeal i.e. lack of unity and lack of novelty, are not correct and do not give any reasons or arguments as to why these findings are challenged.

4. A brief statement of grounds of appeal may be considered sufficient in extreme cases, e.g. where a substantial violation of the first-instance proceedings occurred or where a reading of the impugned decision itself reveals that it cannot be upheld, see e.g. J 22/86, (OJ EPO 1987, 280, points 1 and 2 of the Reasons), or T 349/00 (point 4 of the Reasons).

However, no such deficiency is apparent to the Board in the present case. In particular, the decision under appeal is based on the text submitted by the applicant (Article 113(2) EPC), it is reasoned (Rule 68(2) EPC) and based on grounds and evidence on which the applicant had an opportunity to present his comments (Articles 96(2) and 113(1) EPC), including an opportunity to attend oral proceedings (Article 116(1) EPC).

5. Therefore, the appeal is inadmissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

T. Buschek

S. Steinbrener