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D E C I S I O N
of 13 June 2006

Case Number: T 0883/06 - 3.4.03

Application Number: 95935472.1

Publication Number: 0739526

IPC: G07F 7/08

Language of the proceedings: EN

Title of invention:
Real time tele-payment system

Patentee:
Vazvan, Behruz

Opponent:
Nordea Bank Finland PLC
Siemens AG
GIESECKE & DEVRIENT GmbH
Motorola European Intellectual Property Section - Law
Department
Nokia Corporation

Headword:

-

Relevant legal provisions:
EPC Art. 106, 122

Keyword:
"Appeal against a decision of a board of appeal -
inadmissible"

Decisions cited:
G 0001/97

Catchword:

-



Case Number: T 0883/06 - 3.4.03

D E C I S I O N
of the Technical Board of Appeal 3.4.03
of 13 June 2006

Appellant: Vazvan, Behruz
(Patent Proprietor) Aitanavain 7 As 8
FI-01660 Vantaa (FI)

Representative: -

Respondents: Nordea Bank Finland PLC
(Opponent) Aleksanterinkatu 36
FI-00020 Nordea (FI)

Representative: Slingsby, Philip Roy
Page White & Farrer
54 Doughty Street
London WC1N 2LS (GB)

(Opponent) Siemens AG
Postfach 22 16 34
D-80506 München (DE)

Representative:

(Opponent) GIESECKE & DEVRIENT GmbH
Prinzregentenstrasse 159
D-81677 München (DE)

Representative: -

(Opponent) Motorola European Intellectual
Property Section - Law Department
Midpoint, Alencon Link, Basingsloke
Hampshire RG21 7PL (GB)

Representative: Kuhl, Dietmar
Grünecker, Kinkeldey Stockmair & Schwanhäusser
Anwaltssozietät
Maximilianstrasse 58
D-80538 München (DE)

(Opponent) Nokia Corporation
Keilalahdentie 4
FI-02150 Espoo, PO Box 226 (FI)

Representative: Ruuskanen, Juha-Pekka
Page White & Farrer
54 Doughty Street
London WC1N 2LS (GB)

Decision under appeal: Decision of Technical Board of Appeal 3.4.03
dated 15 February 2006 in re appeal T 0983/04.

Composition of the Board:

Chairman: R. G. O'Connell
Members: G. Eliasson
P. Mühlens

Summary of Facts and Submissions

- I. This board announced a decision at oral proceedings on 15 February 2006 in appeal case T 983/04 to dismiss the appeal of the appellant proprietor (in the following referred to as "Decision I"). The reasoned written decision was dispatched to the appellant proprietor on 15 May 2006.
- II. By letter dated 16 February 2006 and received on 23 February 2006, the appellant proprietor requested that the board forward the case to the Enlarged Board of Appeal and allow the appellant proprietor to be heard properly by submitting his requests.
- III. By decision dated 3 May 2006, dispatched on 15 May 2006, this board rejected the request of the appellant proprietor to refer the case to the Enlarged Board of Appeal as inadmissible ("Decision II").
- IV. By letter dated 29 May 2006, the former appellant proprietor appeals against decision I of this board. A further letter of 1 June 2006 was filed on 5 June 2006.
- V. By letter dated 31 May 2006 and received on 1 June 2006, the appellant proprietor requested re-establishment of rights pursuant to Article 122 EPC.
- VI. The appellant proprietor requests:
1. that Decision I be cancelled and that the appeal proceedings be continued;

2. that the rights of the appellant proprietor be re-established;
3. that the patent be registered in the Register of European Patents for further processing;
4. that the patent be maintained unamended according to the appellant proprietor's main request;
5. that the patent be maintained on the basis of one of auxiliary requests 1 to 11 submitted during the appeal procedure in case the board is not minded to maintain the patent as granted;
6. that the patent be maintained as amended according to at least one of auxiliary requests 12 and 13 filed with the letter dated 1 June 2006 in case the board is not minded to grant any of requests 1 to 3;
7. that oral proceedings be appointed if the board is not minded to grant any of the above-mentioned requests;
8. that the case be referred to the Enlarged Board of Appeal in case the board is not minded to grant any of the requests 1 to 5 for the reason that the case is very complex, both technically and judicially;
9. that the appellant proprietor be given at least one opportunity to file further written submissions, regardless of whether the case is referred to the Enlarged Board of Appeal or not;

10. that oral proceedings be appointed if the case is transferred to Enlarged Board of Appeal in order to allow the proprietor to be heard properly;
11. that the question of inadmissibility of opponent 05 be referred in any case to the Enlarged Board of Appeal.

Reasons for the Decision

The appeal dated 29 May 2006

1. The appellant proprietor appeal dated 29 May 2006 aims at the revision of the final decision of the present board. According to the decision G 1/97 (OJ EPO 2000, 322) by the Enlarged Board of Appeal, such an appeal must be considered to be addressed to the board in question as the responsible judicial body (reasons 6).
2. According to G 1/97, any requests based on the alleged violation of a fundamental procedural principle and aimed at the revision of a final decision of a board of appeal should be rejected as inadmissible (reasons 6; order 1). Therefore, the appeal against the final decision of this board of appeal dated 15 February 2006 must be rejected as inadmissible (G 1/97, reasons 6, first sentence).
3. The appellant proprietor has requested oral proceedings (requests 7 and 10) and has also requested the opportunity to file further submissions (request 9).

The Enlarged Board has stated in G 1/97 that since a request which aims at the revision of a final decision of a board of appeal on the ground of an alleged violation of a fundamental procedural principle cannot be validly filed and must eventually be rejected as inadmissible because it is based on a remedy which is non-existent, the board concerned with the request in question is able to consider a request aimed at the revision of its own decision immediately and without any further procedural formalities (reasons 6, last paragraph). Accordingly the requests for oral proceedings and for the opportunity to file further submissions are refused.

4. The requests for referring the case to the Enlarged Board of Appeal (requests 8 and 11) must likewise be rejected as inadmissible, since as held in G 1/97, the Enlarged Board of Appeal is not an appeal court under the European Patent Convention and has no jurisdiction to hear cases relating to revision of a final decision of a board of appeal (see also decision T 983/04 dated 3 May 2006, reasons 2).

Request for re-establishment of rights

5. As held in G 1/97 (see reasons 2(b)), Article 122 EPC offers no scope for the idea of a request for a review of a final decision of a board of appeal, since one of the essential conditions of that Article is having been unable to observe a time limit vis-à-vis the EPO, ie a time limit laid down by the EPO or provided for in the EPC. Since in the present case the final decision of 15 February 2006 by the board in case T 983/04 had the effect of confirming the revocation of the opposed

patent, all proceedings at the European Patent Office concerning the opposed patent are terminated. Consequently there cannot be any time limit to be observed once the decision of 15 February 2006 was issued. Therefore, the request for re-establishment of rights must likewise be rejected as being inadmissible (G 1/97, reasons 6).

Order

For these reasons it is decided that:

1. The appeal of the appellant proprietor against the decision of the board dated 15 February 2006 in case T 983/04 is rejected as being inadmissible.
2. The request for re-establishment of rights is rejected as being inadmissible.

Registrar

Chair

S. Sánchez Chiquero

R. G. O'Connell