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**Datasheet for the decision
of 17 October 2007**

Case Number: T 0552/07 - 3.5.04

Application Number: 03795032.6

Publication Number: 1550307

IPC: H04N 7/14

Language of the proceedings: EN

Title of invention:

A method in a digital mobile station, a digital mobile station, application software, and a system for displaying visual information

Applicant:

Nokia Corporation

Opponent:

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Headword:

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Relevant legal provisions:

EPC Art. 108

EPC R. 67

Keyword:

"Reimbursement of the appeal fee after withdrawal of the appeal (no)"

Decisions cited:

J 0012/86, T 0041/82, T 1375/05

Catchword:

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Case Number: T 0552/07 - 3.5.04

DECISION
of the Technical Board of Appeal 3.5.04
of 17 October 2007

Appellant:

Nokia Corporation
Keilalahdentie 4
FI-02150 Espoo (FI)

Representative:

Rahkonen, Erkki Juhani
Tampereen Patenttitoimisto Oy
Hermiankatu 12 B
FI-33720 Tampere (FI)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 27 November 2006
refusing European application No. 03795032.6
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. Edlinger
Members: M. Paci
T. Karamanli

Summary of Facts and Submissions

- I. In its decision dated 27 November 2006 the examining division refused European patent application No. 03 795 032.6.
- II. Against this decision the appellant filed a notice of appeal received on 25 January 2007. The appeal fee was paid on the same day.
- III. In a letter received on 6 March 2007 the appellant informed the board that he had decided "not to proceed with the Appeal" and requested that the appeal fee be reimbursed.
- IV. No statement of grounds of appeal was filed within the four-month time limit provided for in Article 108, third sentence EPC, or at all.
- V. In a communication dated 14 June 2007, sent by registered post with advice of delivery, the board informed the appellant that reimbursement of the appeal fee was not possible, as set out in decision T 41/82, OJ EPO 1982, 256, a copy of which was enclosed.
- VI. No reply to this communication has been received by the board.

Reasons for the Decision

1. In the circumstances set out in points III to VI above the appellant's declaration "not to proceed with the Appeal " has to be interpreted as an unconditional

withdrawal of the appeal. As a consequence, the present appeal was withdrawn from consideration by the board in respect of admissibility and allowability. However the appellant's request for reimbursement of the appeal fee remains to be decided by the board in the exercise of its inherent power (see T 41/82 (*supra*) and J 12/86, OJ EPO 1988, 83).

2. According to the established jurisprudence of the boards of appeal of the EPO (see J 12/86 (*supra*), T 41/82 (*supra*), T 1375/05 and Case Law of the Boards of Appeal of the EPO, 5th edition 2006, VII.D.15.1 with further references), the appeal fee cannot be reimbursed where a notice of appeal was filed and the appeal fee was paid within the time limit under Article 108 EPC, but the appeal was withdrawn before filing a statement of grounds of appeal in due time.

Once an appeal has been filed in accordance with Article 108 EPC, and has therefore come into existence, a request for reimbursement of the appeal fee can only be allowed under Rule 67 EPC in the event of interlocutory revision (Article 109 EPC) or where the board deems an appeal to be allowable and such reimbursement is equitable by reason of a substantial procedural violation. In the present case the appeal cannot be held to be allowable because it was withdrawn (see point 1 above). Hence, the conditions of Rule 67 EPC for reimbursement of the appeal fee are not met. Therefore the request for reimbursement of the appeal fee must be refused.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is refused.

The Registrar

The Chairman

D. Sauter

F. Edlinger