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**Datasheet for the decision
of 23 January 2008**

Case Number: T 0569/07 - 3.5.01

Application Number: 02425790.9

Publication Number: 1434137

IPC: G06F 13/28

Language of the proceedings: EN

Title of invention:

Bus architecture with primary bus and secondary bus for
microprocessor systems

Applicant:

STMicroelectronics S.r.l.

Opponent:

-

Headword:

Bus architecture/STMICROELECTRONICS

Relevant legal provisions:

EPC R. 103

Relevant legal provisions (EPC 1973):

EPC Art. 96(2), 110(3), 113(1)

EPC R. 67

Keyword:

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

Decisions cited:

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Catchword:

See point 1 of the reasons



Case Number: T 0569/07 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 23 January 2008

Appellant: STMicroelectronics S.r.l.
Via C. Olivetti, 2
I-20041 Agrate Brianza (Milano) (IT)

Representative: Pellegri, Alberto
Società Italiana Brevetti S.p.A.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 22 November 2006
refusing European application No. 02425790.9
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. Steinbrener
Members: K. Bumès
A. Pignatelli

Summary of Facts and Submissions

- I. The appeal was filed against the decision of the examining division to refuse European patent application No. 02425790.9.
- II. The appellant filed a notice of appeal on 19 January 2007 and a statement setting out the grounds of appeal on 20 March 2007. The appellant requested that the decision under appeal be set aside, the case be remitted to the examining division and the appeal fee be refunded (main request). As an auxiliary request, the application should be processed to grant on the basis of a set of amended claims submitted with the statement of grounds of appeal.
- III. The request for reimbursement of the appeal fee is based on allegations of two substantial procedural violations:
- Article 113(1) EPC 1973: An essential point (paragraph 10) of the examining division's reasoning has been set forth for the first time in the decision to refuse;
 - Article 96(2) EPC 1973: Instead of issuing a second substantive communication to warn the applicant of an imminent refusal, the examining division refused the application after a single communication to which the applicant had replied in a *bona fide* attempt to deal with the examining division's objection.
- IV. In a communication pursuant to Article 110(3) EPC 1973 and Article 4(2) RPBA 1973, the Board expressed and substantiated preliminary doubts *inter alia* about an inventive step of the bus architecture according to

claim 1 (both requests) and about the original basis of the amended claim 1 (auxiliary request). Moreover, referring to Rule 67 EPC 1973, the Board did not identify any procedural violation which would justify a reimbursement of the appeal fee.

- V. By a facsimile letter received on 11 December 2007, the appellant withdrew the application, asked the Board not to send any "further reminders of terms", and requested at the same time "that any refundable fee or part of fee be refunded".

Reasons for the Decision

1. Although the application was no longer pending on 13 December 2007 (= date of entry into force of the revised version of the EPC), the question of reimbursement of the present appeal fee is still pending. Therefore, Article 1(1) of the Decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the European Patent Convention of 29 November 2000 (see "European Patent Convention", 13th edition, European Patent Office, July 2007, pages 497 to 501) and Article 2 of the Decision of the Administrative Council of 7 December 2006 amending the Implementing Regulations to the European Patent Convention 2000 (OJ EPO 2007, 8) would have to be taken into account in order to establish which of the Rules governing the reimbursement of appeal fees - Rule 67 EPC 1973 or Rule 103 EPC - is applicable to the present case.

However, that question can be left open since both Rule 67 EPC 1973 and Rule 103 EPC stipulate the allowability of the appeal as a condition for reimbursement of the appeal fee, and the present appeal is not allowable as the application has been withdrawn.

2. Hence, under both versions of the EPC, the aforementioned condition for reimbursement of the appeal fee is not met. The request for reimbursement must therefore be refused already for that reason.
3. Moreover, as communicated to the appellant, the Board has not identified any substantial procedural violation so that a further condition laid down in both versions of the EPC would not be met, either.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

T. Buschek

S. Steinbrener