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**Datasheet for the decision
of 22 August 2008**

Case Number: T 1042/07 - 3.4.01

Application Number: 02714377.5

Publication Number: 1374337

IPC: H01Q 9/04

Language of the proceedings: EN

Title of invention:

Antenna with substrate and conductor track structure

Applicant:

Koninklijke Philips Electronics N.V., et al

Headword:

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Relevant legal provisions:

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Relevant legal provisions (EPC 1973):

EPC Art. 108, 116(1)

EPC R. 65(1), 67

Keyword:

"Missing statement of grounds"

Decisions cited:

T 0324/90, T 0013/82

Catchword:

In the absence of anything that can be regarded as a statement of grounds of appeal, the lack of any substantive response to a notification of the inadmissibility of the appeal is considered as equivalent to an abandonment of a request for oral proceedings initially made in the notice appeal (point 3 of the Reasons).



Case Number: T 1042/07 - 3.4.01

D E C I S I O N
of the Technical Board of Appeal 3.4.01
of 22 August 2008

Appellant: Koninklijke Philips Electronics N.V., et al
Groenewoudseweg 1
NL-5621 BA Eindhoven (NL)

Representative: Volmer, Georg
Philips Intellectual Property & Standards GmbH
Weisshausstrasse 2
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 3 January 2007
refusing European application No. 02714377.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: B. Schachenmann
Members: H. Wolfrum
F. Neumann

Summary of Facts and Submissions

- I. The appellant contests the decision of the examining division dated 3 January 2007 refusing European patent application No. 02 714 377.5.

- II. The appellant filed a notice of appeal received on 26 February 2007 and paid the appeal fee on the same day. The appellant requested that the decision under appeal be set aside. Moreover, an auxiliary request for oral proceedings was made.

- III. No statement of grounds of appeal was filed within the four-month time limit provided for in Article 108 EPC 1973.

- IV. In a communication dated 13 July 2007 sent by registered letter with advice of delivery, the board informed the appellant that no statement of grounds of appeal had been received and that the appeal should be expected to be rejected as inadmissible. The appellant was informed that any observations would have to be filed within two months.

- V. By letter dated 29 October 2007 the appellant declared withdrawal of the application on the condition that any fee be refunded. If no refund was possible, the application was not withdrawn.

No observations were made as to the missing statement of grounds of appeal and the impending rejection of the appeal as inadmissible.

Reasons for the Decision

1. As no written statement of grounds of appeal has been filed and as the notice of appeal does not contain anything that could be regarded as a statement of grounds of appeal according to Article 108 EPC 1973, the appeal has to be rejected as inadmissible (Article 108 EPC 1973 in conjunction with Rule 65(1) EPC 1973).

2. The Board interprets the conditional withdrawal of the application made by letter of 29 October 2007 as a request for reimbursement of the appeal fee.

2.1 According to Rule 67 EPC 1973, the appeal fee shall be reimbursed in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

In the present case, given the absence of anything that can be regarded as a statement of grounds, the conditions for reimbursement of the appeal fee under Rule 67 EPC 1973 are not met (T 13/82, OJ 1984, 411).

2.2 According to established jurisprudence of the boards of appeal, the appeal fee is also reimbursed in a case where, by virtue of Article 108 EPC, second sentence, an appeal is not deemed to have been filed.

In the present case, however, a notice of appeal was filed and the appeal fee was paid within the time limit under Article 108 EPC, first sentence. Consequently, the appeal is deemed to be filed and the appeal fee was

not paid without reason (T 324/90, OJ 1993, 33, point 9).

- 2.3 For these reasons, the appellant's implicit request for reimbursement of the appeal fee cannot be allowed.
3. Auxiliary request for oral proceedings made in the notice of appeal

Article 116(1) EPC stipulates that oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings.

Therefore it is common practice of the departments of the EPO to arrange for oral proceedings at the request of a party before any adverse decision is taken against that party. In this context, the right to oral proceedings is perceived as a fundamental right which guarantees the requesting party that it is given an opportunity to argue its case orally before any decision is taken.

In the specific circumstances of the present case, where the appellant has not provided any statement as to the substantive merits of its appeal, has not given any explanation or comment as to why no statement of grounds had been filed, and has not reacted in substance to the Board's notification of an impending rejection of the appeal as inadmissible, the Board considers the initial auxiliary request for oral proceedings to have become obsolete as a consequence of the subsequent course of action taken. In other words, the lack of any substantive response to the

notification of the inadmissibility of the appeal is considered as equivalent to an abandonment of the request for oral proceedings.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar

The Chairman

R. Schumacher

B. Schachenmann