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**Datasheet for the decision
of 8 October 2008**

Case Number: T 0212/08 - 3.5.03

Application Number: 05026313.6

Publication Number: 1696651

IPC: H04M 11/00

Language of the proceedings: EN

Title of invention:
Prepaid short messaging

Applicant:
TeleCommunication Systems, Inc.

Opponent:
-

Headword:
Prepaid short messaging/TELECOMMUNICATION SYSTEMS

Relevant legal provisions:
EPC R. 103(1)

Keyword:
"Withdrawal of appeal"
"Reimbursement of the appeal fee (no)"

Decisions cited:
G 0008/91, T 0041/82, T 0308/05, J 0030/94, J 0038/97

Catchword:
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Case Number: T 0212/08 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 8 October 2008

Appellant: Telecommunication Systems, Inc.
275 West Street
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Annapolis, MD 21401 (US)

Representative: Walker, Neville Daniel Alan
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Decision under appeal: Decision of the examining division of the
European Patent Office posted 8 August 2007
refusing European application No. 05026313.6
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division, posted 8 August 2007, refusing European patent application No. 05026313.6 (publication number EP 1 696 651 A).
- II. The applicant filed a notice of appeal on 8 October 2007 and paid the appeal fee the same day. A statement of grounds of appeal was filed on 10 December 2007, in which the appellant requested that the decision be cancelled and that oral proceedings be held.
- III. In a communication dated 7 April 2008 the appellant was informed that the renewal fee was not paid by the due date and that it could still be validly paid, provided that the additional fee was paid at the same time. Otherwise, the application would be deemed to be withdrawn (Article 86(1) EPC).
- IV. In a letter dated 28 August 2008 the appellant informed the board that it wished to withdraw the appeal. Further, a refund of the appeal fee was requested.

Reasons for the Decision

1. The notice of appeal and the appeal fee have been filed within the time limit provided for by Article 108 EPC. The appeal is therefore considered to have been filed.
2. With the letter dated 28 August 2008 the appellant withdrew the appeal. The board notes that a communication pursuant to Rule 112(1) EPC concerning a

loss of rights due to non-payment of the renewal fee has so far not been issued. Hence, whether or not the application is to be deemed to be withdrawn may still be challenged by the appellant. However, in any case, due to the withdrawal of the appeal, the appeal proceedings are now terminated, in so far as the substantive issues settled by the contested decision at first instance are concerned (G 8/91 (OJ EPO 1993, 346)). The board will therefore not decide on the substantive issues.

Since the statement of grounds of appeal was only concerned with the substantive issues then at stake, the withdrawal of the appeal implies that the (unconditional) request for oral proceedings as submitted with the statement of grounds of appeal is also withdrawn. Summoning the appellant to and holding oral proceedings would also go against the appellant's current wish to withdraw the appeal, since in the board's view this implies that the appellant no longer wants to actively participate in the appeal proceedings.

3. In the exercise of its inherent original jurisdiction to consider applications made to it in matters arising out of or in connection with the former appeal proceedings, the board remains however competent to decide on the request for reimbursement of the appeal fee (cf. T 41/82 (OJ EPO 1982, 256)).
4. According to Rule 103(1) EPC, 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, or if the appeal is withdrawn before the filing of the statement of

grounds of appeal and before the period for filing that statement has expired. In the present case, none of these conditions are fulfilled, since the examining division did not rectify its decision, the board will not enter into the issue of examining whether the appeal is allowable (see point 2 above), and since the appeal was withdrawn after the filing of the statement of grounds of appeal and after the period for filing that statement had expired, namely after 18 December 2007 (Article 108 and Rule 126(2) EPC).

5. The case in which no notice of appeal has been filed or in which no notice of appeal is deemed to have been filed, which in the absence of any legal basis for its payment would have justified a reimbursement of the appeal fee, does not apply here (see point 1 above).

6. The board sees no exceptional circumstances which, if at all, might have justified a reimbursement of the appeal fee outside the scope of Rule 103(1) EPC for reasons of equity (cf. T 308/05 (point 5 of the reasons), J 30/94, and J 38/97 (all not published in OJ)).

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is rejected.

The Registrar

The Chairman

D. Magliano

A. S. Clelland