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Datasheet for the decision
of 20 February 2009

Case Number: T 1053/08 - 3.2.02

Application Number: 02254543.8

Publication Number: 1269911

IPC: A61B 5/0205

Language of the proceedings: EN

Title of invention:
System and method for selecting physiological data from a
plurality of physiological data sources

Applicant:
GE Medical Systems Information Technologies, Inc.

Opponent:
-

Headword:
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Relevant legal provisions:
EPC Art. 103(1)(a), 111(2)

Relevant legal provisions (EPC 1973):
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Keyword:
"Decision under appeal unreasoned"
"Remittal to the first instance"
"Reimbursement of the appeal fee (procedural violation)"

Decisions cited:
T 0278/00, T 0897/03, T 1356/05

Catchword:
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Case Number: T 1053/08 **-** 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 20 February 2009

Appellant:	GE Medical Systems Information Technologies, Inc.
	8200 West Power Avenue
	Milwaukee
	Wisconsin 53223 (US)
Representative:	Pedder, James Cuthbert
	London Patent Operation
	General Electric International, Inc.
	15 John Adam Street
	London WC2N 6LU (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted 25 January 2008 refusing European application No. 02254543.8 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman:	M. Noel
Members:	S. Chowdhury
	C. Vallet

Summary of Facts and Submissions

I.   The appeal is directed against the decision of the
        examining division, notified on 25 January 2008, to
        refuse the European patent application No 02 254 543.8,
        relating to a "*System and method for selecting
        physiological data from a plurality of physiological
        data sources*".

II.   The contested decision reads as follows:

        "*In the communication dated 10.09.2007 the applicant
        was informed that the application does not meet the
        requirements of the European Patent Convention.
        The applicant was also informed of the reasons therein.*

        *The applicant filed no comments or amendments in reply
        to the latest communication but requested a decision
        according to the state of the file by a letter received
        in due time on 15.01.2008.*

        *The European patent application is therefore refused on
        the basis of Article 97(2) EPC.*"

III.   The appellant lodged an appeal against the decision on
        20 March 2008 and paid the prescribed fee on the same
        day. A statement setting out the grounds of appeal was
        filed on 28 May 2008.

IV.   The appellant requests that the contested decision be
        set aside and that a patent be granted on the basis of
        the claims currently on file or on the basis of amended
        claims to be submitted subsequently.

He also requests oral proceedings as an auxiliary
request.

V.   In its grounds of appeal the appellant argued on the
        merits of the invention regarding novelty and inventive
        step over D1 (US-A-4860759).

Reasons for the decision

1.   The appeal meets the requirements of Articles 106 to
        108 and Rule 99 EPC and is therefore admissible.

2.   The purpose of an appeal procedure is mainly to give a
        party adversely affected by a decision of the first
        instance the possibility of challenging this decision
        on its merits. In order for a party to be able to
        examine whether a decision is justified or not,
        decisions open to appeal shall be reasoned. This
        principle, stated in Rule 111(2) EPC, is of major
        importance for ensuring the fairness of the procedure.

        Pursuant to the established jurisprudence of the Boards
        of Appeal, a reasoned decision must contain the grounds
        upon which the decision is based and all decisive
        considerations in respect of the legal and factual
        aspects of the case in file. (see T 278/00, OJ 2003 546,
        T 897/03, T 1356/05).

3.   In the present case, the contested decision neither
        specifies the grounds upon which it is based nor
        contains any facts or arguments that justify the
        refusal of the patent application. The appealed
        decision contains solely a reference to reasons given

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in a previous communication issued in the course of the examination.

4.   More specifically, the examining division based its decision on the fact that the appellant did not filed any comments in reply to the latest communication of 10 September 2007. This is not correct. The appellant actually replied by letter dated 17 December 2007 to the first instance's communication dated 10 September 2007, whereby a comparison between the features of claim 1 and the disclosure of D1 was presented and a new set of claims was filed as an auxiliary request.

5.   Further, by letter dated 15 January 2008, the appellant withdrew its request for oral proceedings before the first instance, cancelled its auxiliary request and requested a decision according to the state of the file. This request cannot be interpreted as a waiver of the right to a reasoned decision from the examining division.

6.   By ignoring the appellant's response of 17 December 2007 and in the absence in the contested decision of any reasoning, a substantial procedural violation has been committed which justifies reimbursement of the appeal fee pursuant to Rule 103(1)(a) EPC.

7.   The decision under appeal must therefore be set aside due to the lack of reasoning required by Rule 111(2) EPC and the case remitted to the first instance for further prosecution.

8.   Since the decision must be set aside, there is no need to hold oral proceedings before the Board.

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Order

For these reasons it is decided that:

1.   The decision under appeal is set aside.

2.   The case is remitted to the first instance for further
        prosecution.

3.   The appeal fee is to be reimbursed.

The Registrar   The Chairman

A. Wolinski   M. Noel