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**Datasheet for the decision  
of 16 June 2011**

**Case Number:** T 1882/08 - 3.4.01

**Application Number:** 04025158.9

**Publication Number:** 1526603

**IPC:** H01Q 1/24

**Language of the proceedings:** EN

**Title of invention:**

Anti-radiation electroconductive screen assembly for hand-held  
and cellular phones

**Applicant:**

Ditta Egidio Broggi S.n.c.

**Opponent:**

-

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 123(2)

EPC R. 52(1)

**Keyword:**

"Added subject-matter (yes: all requests)"

"Oral proceedings held and substantive decision taken in spite  
of loss of rights due to non-payment of a renewal fee and the  
corresponding additional fee"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1882/08 - 3.4.01

**D E C I S I O N**  
of the Technical Board of Appeal 3.4.01  
of 16 June 2011

**Appellant:**

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**Representative:**

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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 30 April 2008  
refusing European patent application  
No. 04025158.9 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** B. Schachenmann  
**Members:** H. Wolfrum  
G. Assi

## Summary of Facts and Submissions

I. European patent application 04 025 158.9 (publication No. 1 526 603) was refused by a decision of the examining division dispatched on 30 April 2008, on the ground of lack of inventive step (Articles 52(1) and 56 EPC 1973) of the subject-matter of the claims of a main request and an auxiliary request then on file.

II. The applicant lodged an appeal against the decision on 8 July 2008 and paid the prescribed fee. On 20 August 2008 a statement of grounds of appeal was filed together with new sets of claims according to a main request and an auxiliary request.

By letter of 24 March 2010 the appellant made a request for oral proceedings as a second auxiliary request.

III. On 14 February 2011 the appellant was summoned to oral proceedings to take place on 16 June 2011.

In a communication annexed to the summons the Board pointed *inter alia* to problems of added subject-matter (Article 123(2) EPC) for the requests on file.

IV. The appellant did not respond to the Board's communication.

V. In the course of preparing for the oral proceedings the Board became aware of the circumstance that the renewal fee for the 7th year was not paid and that the period of six months for payment of this fee plus the corresponding additional fee according to Rule 51(2) EPC had expired without a payment having been received.

An informal attempt of the Board to gain supplementary information from the appellant via the appellant's sub-authorized representative failed.

VI. Oral proceedings were held on 16 June 2011 in the unannounced absence of the appellant.

VII. The appellant has requested in writing that the decision under appeal be set aside and a patent be granted on the basis of sets of claims filed as a main request and as an auxiliary request, respectively, on 20 August 2008 with the statement setting out the grounds of appeal.

VIII. Claim 1 of the **main request** reads as follows :

*"1. Casing suitable to be applied onto the housing of an existing cellular phone provided with an antenna, said casing (1) having a front half-shell (2) facing a user and a rear half-shell (3) and comprising an electro conductive anti-radiation screen assembly impermeable to electromagnetic radiation transmitted by the phone and directed to a user of said phone, said front half-shell (2) comprising a keypad (4; 104) and a display screen (5, 105), wherein:*

*- the front half-shell (2), except for the keypad and the display screen, consists of an electro-conductive metal material, providing said anti-radiation screen assembly;*

*- the rear half-shell (3) is at least partially permeable to allow electromagnetic radiation to be transmitted and received by said antenna housed in the casing (1; 101);*

- *the display screen (5; 105) is coated with or includes a metal protective grid impermeable to said electromagnetic radiation;*
- *the keypad (4; 104) is also impermeable to said electromagnetic radiation."*

At the end of claim 1 of the **auxiliary request** the feature is added :

*"said rear half-shell (3) consisting of a metal material impermeable to said electromagnetic radiation and comprising a window (106) which is arranged at a position where said antenna is located inside the phone such that electromagnetic signals may be easily transmitted and received by said antenna."*

## **Reasons for the Decision**

1. In the light of the entry into force of the EPC 2000, reference is made to Article 7(1), 2nd sentence of the Revision Act of 29 November 2000 ("Act revising the Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973, last revised on 17 December 1991") and the transitional provisions for the amended and new provisions of the EPC (Decision of the Administrative Council of 28 June 2001), from which it may be derived which Articles of the EPC 1973 are still applicable and which Articles of the EPC 2000 shall apply.
2. The appeal complies with the requirements of Articles 106 to 108 and Rule 99 EPC and is, therefore, admissible.

3. According to the information available to the Board, the renewal fee for the 7th year and the corresponding additional fee had not been paid and the prescribed period of grace for payment according to Rule 51(2) EPC had expired before the date of the oral proceedings. Thus, at the time of the oral proceedings the application was deemed to be withdrawn.

In this situation the Board could have simply awaited the further course of action to be taken by the Office, *ie* the delivery of the obligatory noting of loss of rights according to Rule 112 EPC, and a potential reaction of the appellant.

Despite the fact that, in the present situation, the application was deemed to be withdrawn before the date of the oral proceedings, the Board recognizes that the noting of loss of rights (which has not yet been issued) due to non-payment of the renewal fee and the additional fee could theoretically still be challenged under Rule 112(2) EPC by the appellant, or that re-establishment of rights pursuant to Article 122 EPC could be requested. In view of these factors, which may potentially prolong the proceeding, and in view of the fact that appeal proceedings are independent from proceedings concerning the payment of renewal fees, the Board decided in the present case to continue the appeal with the arranged oral proceedings. In arriving at this decision the Board also took into account the fact that, since the appellant had refrained from providing any indication concerning its intended course of action, the members of the Board had to be - and in fact were - fully prepared in substance for the oral

proceedings. Moreover, the Board was aware that a substantive decision taken at the end of the oral proceedings could bring all pending proceedings in the present application to a speedy conclusion, in the interest of the EPO as well as of the general public. Of course, had the Board arrived in its deliberation at the end of the oral proceedings at a view which in substance would have been positive for the claimed subject-matter, it would have had to let the procedure under Rule 112 EPC and/or Article 122 EPC run its course.

4. In its communication the Board had expressed its preliminary view that claim 1 of both requests on file comprised added subject-matter, so that these requests infringed Article 123(2) EPC. The appellant neither replied to these objections nor filed any amendments to the claim definitions. Thus, the Board has no reason deviate from its preliminary opinion.

4.1 Claim 1 of each of the two requests on file is directed to a "*casing suitable to be applied onto the housing of an existing cellular phone provided with an antenna*".

According to the appellant, the thus claimed subject-matter should be understood as relating to a casing in the form of a "*box, case or envelope*" around an already existing phone (page 1 of the statement of grounds of appeal).

However, such an item, *ie* a casing to be used as a mechanically rigid, self-supporting structure in addition to and surrounding the housing of an already complete and functional cellular phone, is not

disclosed in a clear and unambiguous manner in the application documents as originally filed.

Attention is drawn to the fact that the English translation of the application as filed is directed to an "*anti-radiation screen assembly*" to be used with cellular phones (see the originally-filed claims). It is this function of radiation protection to which the Italian phrase "*struttura di custodia antiradiazione, particolarmente per telefoni portatili*" in the priority document and the translated expression "*anti-radiation casing construction, specifically designed for hand-held phones*" (paragraph [0001] of the published version of the application) make reference. The "*anti-radiation screen assembly*" comprises a "*front half-shell*" and a "*rear half-shell*" "*which are applied, in a per se known manner, to the body of a cellular phone*" (paragraphs [0010] and [0016] of the published application). That such two half-shells need not be mechanically rigid or self-supporting becomes apparent from paragraphs [0016] and [0027] of the published application, according to which the casing construction can take on the form of a "*coating*".

The application documents as originally filed do not use the term "*housing*" but refer to the term "*body of a cellular phone*" (original claim 6; paragraphs [0010], [0016] and [0020] of the published application), which has a more general meaning than "*housing*". In fact, wherever the original application documents refer in an unambiguous manner to the "*anti-radiation screen assembly*" in association with a "*casing*", this assembly either constitutes the very casing of the phone or a



coating thereon (paragraphs [0016] and [0025] of the published application).

4.2 Moreover, the phrase "*said casing (1) having a front half-shell (2) facing a user and a rear half-shell (3) and comprising an electro conductive anti-radiation screen assembly*" used in claim 1 of each of the requests on file implies that the two half-shells and the anti-radiation screen assembly form different constituents of the claimed casing. No basis of disclosure exists for such subject-matter.

5. For these reasons, none of the appellant's requests on file complies with the requirement of Article 123(2) EPC.

In conclusion, the appellant's requests are not allowable.

## **Order**

**For these reasons it is decided that :**

The appeal is dismissed.

The Registrar

The Chairman

S. Sanchez Chiquero

B. Schachenmann