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**Datasheet for the decision  
of 18 December 2012**

**Case Number:** T 1145/09 - 3.5.03

**Application Number:** 99115002.0

**Publication Number:** 0961184

**IPC:** G05B 19/418

**Language of the proceedings:** EN

**Title of invention:**

System for use in a field device management

**Patentee:**

Fisher-Rosemount Systems, Inc.

**Opponent:**

Endress+Hauser (Deutschland) AG+Co. KG

**Headword:**

Stay of proceedings/FISHER-ROSEMOUNT II

**Relevant legal provisions:**

EPC Art. 112(3)  
EPC R. 140

**Keyword:**

"Request for correction of text of granted patent  
(inadmissible)"  
"Reimbursement of appeal fee (no)"

**Decisions cited:**

G 0001/10

**Catchword:**

A patent proprietor's request for a correction of the text of  
the patent is inadmissible (see G 1/10).



Case Number: T 1145/09 - 3.5.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.03  
of 18 December 2012

**Appellant:** Endress+Hauser (Deutschland) AG+Co. KG  
(Opponent) Colmarer Strasse 6  
D-79576 Weil am Rhein (DE)

**Representative:** -

**Respondent:** Fisher-Rosemount Systems, Inc.  
(Patent Proprietor) 8301 Cameron Road  
Austin, Texas 78754 (US)

**Representative:** Bohnenberger, Johannes  
Meissner, Bolte & Partner GbR  
Widenmayerstrasse 48  
D-80538 München (DE)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
12 March 2009 staying opposition proceedings  
concerning European patent No. 0961184.

**Composition of the Board:**

**Chairman:** A. S. Clelland  
**Members:** R. Moufang  
F. van der Voort

## **Summary of Facts and Submissions**

- I. This is an appeal of the opponent against the opposition division's interlocutory decision dated 12 March 2009 to stay opposition proceedings and to remit the case to the examining division for a decision on the patent proprietor's request for correction under Rule 140 EPC. The decision allowed a separate appeal against it.
  
- II. In its interlocutory decision in the present case dated 17 June 2010 the board referred questions of law to the Enlarged Board of Appeal. An answer to the questions was given by the Enlarged Board's decision G 1/10 of 23 July 2012. According to that decision Rule 140 EPC is not available to correct the text of a patent so that a patent proprietor's request for such a correction is inadmissible whenever made, including after the initiation of opposition proceedings.
  
- III. On 1 October 2012 the board sent out a communication setting out its preliminary view that the appealed decision had to be set aside and the case remitted to the opposition division for further prosecution. The board furthermore considered that the appellant's request for reimbursement of the appeal fee could not be granted. The board also announced that it intended to issue the decision in writing since neither the appellant nor the respondent had submitted a request for oral proceedings. A time limit of two months was set for any reply to the board's communication.
  
- IV. In its letter dated 7 December 2012 the appellant stated that it agreed with the decision being issued in

writing. The respondent did not submit any reply within the set time limit.

- V. The appellant had requested in writing that the interlocutory decision of the opposition division be set aside, that it be ordered that the opposition division decide on the proprietor's request for correction and that the appeal fee be reimbursed in view of a substantial procedural violation.
- VI. The respondent had implicitly requested that the appeal be dismissed (see section XIII of the board's interlocutory decision).

### **Reasons for the decision**

1. The appeal is admissible (see point 1 of the board's interlocutory decision).
2. The Enlarged Board's decision G 1/10 is binding on the present board in respect of the appeal in question (see Article 112(3) EPC). According to that decision a request to correct the text of a granted patent is inadmissible. The opposition division was therefore wrong to stay the opposition proceedings in order to allow the examining division to decide on the proprietor's request for correction under Rule 140 EPC. Thus its decision has to be set aside.
3. However, the appellant's request for reimbursement of the appeal fee cannot be granted. According to Rule 103(1)(a) EPC the appeal fee shall be reimbursed if (i) an appeal is found to be allowable, (ii) a

substantial procedural violation occurred and (iii) the reimbursement is equitable. The board does not consider that the conditions (ii) and (iii) are fulfilled in the present case. The mere fact that a decision dealing with a point of procedure is not correct in law does not automatically mean that a substantial procedural violation has occurred. This holds true in particular in a case such as the present one where several previous decisions of the boards of appeal supported the view taken by the opposition division (see point 7 of the board's interlocutory decision). It furthermore appears from the contested decision that the opposition division respected the parties' right to be heard and fully considered the arguments submitted by the parties. The appellant did not argue otherwise.

**Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.
3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

L. Fernandez

A. S. Clelland