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**Datasheet for the decision
of 9 January 2013**

Case Number: T 2402/11 - 3.4.02

Application Number: 07799667.6

Publication Number: 2047329

IPC: G02F7/00, G02F1/017

Language of the proceedings: EN

Title of invention:
OPTICAL DIGITAL TO ANALOG CONVERTER

Applicant:
Raytheon Company

Headword:

Relevant legal provisions:

Keyword:
Withdrawal of the appeal - reimbursement of the appeal fee
(no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 2402/11 - 3.4.02

D E C I S I O N
of the Technical Board of Appeal 3.4.02
of 9 January 2013

Appellant: Raytheon Company
(Applicant) 870 Winter Street
Waltham, MA 02451-1449 (US)

Representative: Gosnall, Toby
Barker Brettell LLP
100 Hagley Road
Edgbaston
Birmingham
B16 8QQ (GB)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 6 June 2011 refusing European patent application No. 07799667.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: A. Klein
Members: M. Rayner
L. Bühler

Summary of Facts and Submissions

- I. The applicant lodged an appeal against the decision of the Examining Division posted 6 June 2011 refusing European patent application No. 07799667.6. The notice of appeal was received on 16 August 2011. The appeal fee was paid on the same day.

- II. By communication of 25 November 2011, received by the appellant, the Registry of the Board informed the appellant that it appeared from the file that the written statement of grounds of appeal had not been filed, and that it was therefore to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC. The appellant was informed that any observations had to be filed within two months of notification of the communication.

- III. With letter received on 9 December 2011, the appellant withdrew its appeal and requested reimbursement of the appeal fee.

- IV. In a communication dispatched on 28 December 2011, the Board informed the appellant that the request for reimbursement was to be expected not to succeed. The appellant was informed that any observations had to be filed within two months of notification of the communication.

Reasons for the Decision

1. The appellant's withdrawal of its appeal immediately and automatically terminated the appeal proceedings. Therefore, no decision on the admissibility of the appellant's appeal had to be taken. However, the

appellant's request for reimbursement of the appeal fee is a procedural issue in respect of which the appeal procedure can be continued (G 8/91, OJ EPO 1993, 346, points 3 and 5 of the Reasons) and which has to be decided.

2. The appellant filed a notice of appeal and paid the appeal fee within the time limit set in Article 108, first and second sentence, EPC. Therefore, an appeal has been properly filed pursuant to Article 108, first and second sentence, EPC and has thus come into existence (as opposed to a situation where the appeal is deemed not to have been filed). Consequently, the reimbursement of the appeal fee is governed by Rule 103 EPC, which stipulates that the appeal fee shall be reimbursed:

- (a) 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

- (b) 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.

3. In the present case interlocutory revision has not occurred nor has any substantial procedural violation occurred or been alleged to have occurred. Thus, the conditions for reimbursement stipulated in Rule 103(a) EPC are not fulfilled.

4. The condition of Rule 103(1)(b) EPC is also not fulfilled in the present case, because the appellant's declaration to withdraw the appeal was received on 9 December 2011, i.e. more than seven weeks after the

expiry on 17 October 2011 of the time limit for filing a written statement setting out the grounds of appeal pursuant to Article 108, third sentence, EPC.

5. Thus, there is no reason for the appeal fee to be reimbursed.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



M. Kiehl

A. Klein

Decision electronically authenticated