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Datasheet for the decision
of 14 March 2013

Case Number:	T 1703/12 - 3.5.01
Application Number:	07012976.2
Publication Number:	1843260
IPC:	G06F 17/30, H04L 29/06, H04L 29/08

Language of the proceedings: EN

Title of invention:
Accessing media across networks

Applicant:
APPLE INC.

Opponent:
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Headword:
Reimbursement of the appeal fee/APPLE

Relevant legal provisions:
EPC Art. 109(1)
EPC R. 103(1)(a)

Keyword:
"Interlocutory revision - request for reimbursement of the
appeal fee - competence of the Board of Appeal to decide (no)"

Decisions cited:
G 0003/03, T 0021/02, T 0242/05

Catchword:
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C9249.D
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Boards of Appeal

Chambres de recours

Case Number: T 1703/12 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 14 March 2013

Appellant: (Applicant)	APPLE INC. 1 Infinite Loop Cupertino, CA 95014 (US)
Representative:	Gillard, Matthew Paul Withers & Rogers LLP 4 More London Riverside London SE1 2AU (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 20 January 2012 refusing European patent application No. 07012976.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman:	S. Wibergh
Members:	P. Scriven
	P. Schmitz

C9249.D

Summary of Facts and Submissions

I.   European patent application 07 012 976.2 was refused by the examining division by decision posted on 20 January 2012. On 21 March 2012, a notice of appeal was filed and the appeal fee was paid on the same day. On 29 May 2012, the appellant filed the statement setting out the grounds of appeal and requested that a patent be granted on the basis of the main request or the first or second auxiliary requests filed therewith.

II.   On 12 June 2012, the examining division rectified the decision under appeal by crossing the respective box on Form 2701. This was communicated to the appellant on 27 June 2012, by the use of Form 2710, which stated that following the appeal of 29 May 2012, rectification was ordered and the decision dated 20 January 2012 was set aside.

III.   By letter of 13 July 2012, the appellant requested that, in view of the rectification notification dated 27 June 2012, the appeal fee be reimbursed under Rule 103(1)(a) EPC. The examining division referred this request to the Board of Appeal.

IV.   On 19 September 2012, the Board issued a communication expressing its view that, following decisions T 21/02 and T 242/05, it was not competent to decide on this request and that it intended to remit the case to the department of first instance. The appellant was given a period of 2 months to comment. However, no comments were submitted.

Reasons for the Decision

1.   According to G 3/03 (OJ EPO 2005, 344), in the event of
        interlocutory revision under Article 109(1) EPC, the
        department of first instance whose decision has been
        appealed is not competent to refuse a request of the
        appellant for reimbursement of the appeal fee, but has
        to submit this request to the board of appeal. This
        holds true if the request for reimbursement of the
        appeal fee was filed before the examining division
        granted interlocutory revision.

2.   In G 3/03 the Enlarged Board further stated that
        Rule 67 EPC 1973 (now Rule 103(1)(a) EPC) provided that,
        in the event of interlocutory revision, reimbursement
        of the appeal fee should be ordered by the department
        of the first instance whose decision has been impugned,
        "if such reimbursement was equitable by reason of a
        substantial procedural violation". From the wording of
        this provision it followed that the department of the
        first instance had to examine whether the requirements
        for reimbursement of the appeal fee were met,
        regardless of whether or not the appellant had actually
        submitted such a request. If the department of the
        first instance came to the conclusion that these
        requirements were not met, it could not order
        reimbursement of the appeal fee. In the absence of a
        request for reimbursement of the appeal fee, the
        decision of the department of the first instance
        granting interlocutory revision pursuant to
        Article 109(1) EPC would make no mention of the issue
        of reimbursement of the appeal fee, and the appellant
        would not be adversely affected by the decision
        (point 3 of the reasons). In case of interlocutory

revision and reimbursement of the appeal fee not being contentious, the appeal was not remitted to, and thus would not be pending before, a board of appeal, the decision under appeal having been set aside and the appeal allowed by the department of the first instance (point 2 of the reasons).

3.   In the present case, the request for reimbursement of the appeal fee was only filed after interlocutory revision had been granted. At that time the appeal procedure was no longer pending, because the appeal had been fully dealt with and the appellant was not adversely affected. As a consequence, the request was submitted in the absence of a pending appeal and cannot, hence, constitute an ancillary issue to be dealt with in appeal proceedings. The reimbursement of the appeal fee is linked to the appeal procedure and cannot be separated from it.

4.   That being so, in the case at hand no appeal exists from a decision of a department of first instance for which the boards of appeal are responsible pursuant to Article 21(1) EPC and the Board is not empowered to decide on the request for reimbursement. Since no appeal procedure is pending, the Board can only remit the case to the department of first instance (following decisions T 21/02 of 20 February 2006 and T 242/05 of 20 September 2006).

Order

For these reasons it is decided that:

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

The Registrar: The Chairman:

T. Buschek   S. Wibergh