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**Datasheet for the decision
of 22 November 2013**

Case Number: T 0220/13 - 3.5.05

Application Number: 09719718.0

Publication Number: 2255273

IPC: G06F3/048

Language of the proceedings: EN

Title of invention:

METHOD AND DEVICE FOR ENABLING SELECTION OF AN ITEM FROM A
PLURALITY OF ITEMS

Applicant:

Koninklijke Philips N.V.

Headword:

Appeal not in existence

Relevant legal provisions:

EPC Art 108, first and second sentences

Keyword:

Appeal deemed to be not filed - appeal not in existence
Reimbursement of appeal fee - (yes)

Decisions cited:

J 0021/80, T 0210/89, T 0493/08

Catchword:



**Beschwerdekammern
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Chambres de recours**

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Case Number: T 0220/13 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 22 November 2013

Appellant: Koninklijke Philips N.V.
(Applicant) High Tech Campus 5
5656 AE Eindhoven (NL)

Representative: Coops, Peter
Philips
Intellectual Property & Standards
P.O. Box 220
5600 AE Eindhoven (NL)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 10 October 2012
refusing European patent application No.
09719718.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman: A. Ritzka
Members: G. Weiss
P. Cretaine

Summary of Facts and Submissions

- I. The appeal lies against the decision of the examining division to refuse the European patent application No 09 719 718.0. The decision was dated 10 October 2012 and received by the applicant on 16 October 2012.
- II. By a letter dated on 16 January 2013 and received on the same day, the applicant (thereafter "the appellant") filed a notice of appeal in Dutch (translation in English filed on the same day). The appeal fee was paid on 16 January 2013. It was requested to set the decision aside and to grant a European patent; auxiliarily, oral proceedings was requested. The statement setting out the grounds of appeal was also filed on 16 January 2013.
- III. In response to a communication of the registrar of the Board dated 4 February 2013 on the admissibility of the appeal, the appellant paid on 15 April 2013 a further processing fee.
- IV. By a communication of the Board dated 18 June 2013 setting out a 2-month time limit, the appellant was informed that the appeal was filed outside the required 2-month period and that therefore there is no appeal in existence. On the other hand, the payment of the further processing fee cannot remedy the failure of the 2-month time limit according to Article 108 EPC.
- V. The appellant did not file a response to this communication.

Reasons for the Decision

1. The substantive appeal submissions can only be considered if it is established that an appeal within the terms of Article 106 EPC et seq. has been filed and is admissible under Article 110(1) EPC.
2. The decision under appeal, notified according to Article 119 EPC and Rule 126 (1) EPC, is regarded as received 10 days after the stamp on the letter (Rule 126 (2) EPC). The 2-month and 4-month periods for filing the notice of appeal and the statement setting out the grounds of appeal (Article 108 EPC), respectively, run from the tenth day, even if this day is a Saturday or Sunday. Failure to meet the 2- or 4-month periods can only be remedied with restitutio in integrum (Article 122 EPC). Further processing is excluded in respect of these time limits (Article 121 (4), first sentence EPC).
3. In the present case the advice of delivery of the decision was signed by an authorised person on 16 October 2012. Thus, the 2-month period for filing the notice of appeal expired on 20 December 2012 (date of the decision: 10 October 2012, plus 10 days: 20 October 2012, Saturday and 2 months: 20 December 2012, Thursday; Rules 126 (2) and 131 (4) EPC). The notice of appeal was filed in Dutch on 16 January 2013 (translation in English filed on the same day) and the appeal fee paid also on 16 January 2013.
4. Consequently, both the notice of appeal and the payment of the appeal fee were belated and the appeal is deemed not to have been filed pursuant to Article 108, first sentence, EPC. This means that the appeal is not considered to be in existence (see e.g. J 21/80, OJ EPO 1981, 101; T 210/89, OJ EPO 1991, 433 and T 493/08 of 29 September 2009, reasons, point 7). Furthermore, as

there is no appeal in existence, the request for oral proceedings which was made on an auxiliary basis has to be considered as not filed and the appeal fee must be reimbursed.

5. Concerning the payment of the further processing fee in response to the communication of the registrar dated 4 February 2013, it has to be noted that pursuant to Article 122 (4), first sentence EPC further processing shall be ruled out in respect to the time limits in Article 108 EPC. Thus, there is no legal basis for this payment and the amount paid must be refunded.

Order

For these reasons it is decided that:

1. The appeal is deemed not to have been filed.
2. The appeal fee and the further processing fee are reimbursed.

The Registrar:

The Chairwoman:



K. Götz

A. Ritzka

Decision electronically authenticated