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**Datasheet for the decision
of 13 August 2015**

Case Number: T 0468/13 - 3.5.03

Application Number: 08706692.4

Publication Number: 2074860

IPC: H04W8/26, H04L29/12

Language of the proceedings: EN

Title of invention:

Method and system for managing address prefix information
associated with handover in networks

Applicant:

Huawei Technologies Co., Ltd.

Opponent:

Headword:

Managing address prefix information/HUAWEI

Relevant legal provisions:

EPC Art. 109
EPC R. 103

Keyword:

Interlocutory revision - reimbursement of appeal fee (no)

Decisions cited:

G 0001/10

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0468/13 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 13 August 2015

Appellant: Huawei Technologies Co., Ltd.
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Representative: Pfenning, Meinig & Partner GbR
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 15 November 2012 granting European patent application No. 08706692.4 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman F. van der Voort
Members: T. Snell
R. Cramer

Summary of Facts and Submissions

I. The present decision concerns the appellant's request for reimbursement of the appeal fee submitted in connection with the appeal filed against of the decision of the examining division dated 15 November 2012 granting a European patent in respect of application number EP 08706692.4.

II. The essential steps preceding the filing of the appeal were as follows:

The examining division issued a communication dated 18 July 2012 pursuant to Rule 71(3) EPC indicating the text in which it was proposed to grant a patent.

With a letter dated 6 November 2012, the applicant approved the text and completed the necessary formalities. The decision to grant was duly posted on 15 November 2012.

In a fax letter dated 24 January 2013, the applicant requested a correction under Rule 140 EPC to the effect that page 4 of the patent should be deleted, as had been requested in the applicant's earlier letter dated 2 February 2011.

In the minutes of a telephone conversation between the formalities officer and the applicant's representative dated 25 January 2013, the applicant was informed that correction under Rule 140 EPC was not possible and that the only possibility to set aside the decision was to file an appeal.

III. The applicant filed a notice of appeal on the same day. In the notice of appeal, the appellant requested that

the "false decision" be set aside and a "corrected patent" be granted. It was stated that a written statement setting out the grounds of appeal had been filed with the letter dated 24 January 2013. The appellant requested reimbursement of the appeal fee.

IV. By means of a communication dated 27 February 2013, the examining division ordered rectification pursuant to Article 109 EPC and set aside the decision to grant. However, it was stated that the request for reimbursement of the appeal fee could not be allowed and that the request would be forwarded to the Board of Appeal for a decision (Rule 103(2) EPC).

V. Following commencement of proceedings before the board, the board issued a communication in which the appellant was informed of the reasons why the board considered that the appeal fee should not be reimbursed.

In a response to the board's communication dated 21 July 2015, the appellant requested that the board decide on the basis of the documents currently on file.

Oral proceedings have not been requested.

Reasons for the Decision

1. As the examining division granted interlocutory revision under Article 109 EPC, the only matter to be decided by the board is the request for reimbursement of the appeal fee.
2. In accordance with Rule 103(1)(a) EPC, "The appeal fee shall be reimbursed ... in the event of interlocutory revision ... if such reimbursement is equitable by

reason of a substantial procedural violation". Other reasons for reimbursing the appeal fee are if the appeal is withdrawn before filing the statement of grounds of appeal (Article 103(1)(b) EPC), or if the appeal is deemed not filed, neither of which apply here.

3. The board notes that the appellant has not explicitly alleged that a substantial procedural violation was committed by the examining division. The board has however considered whether the failure to take into account the applicant's request to amend the description dated 2 February 2011 amounts to a substantial procedural violation which would render equitable the reimbursement of the appeal fee. It finds this not to be the case, for the reasons set out below.
4. With the communication under Rule 71(3) EPC dated 18 July 2012, the examining division informed the applicant of the text in which it intended to grant the patent. Thereby, the applicant was given the opportunity to check the text of the patent to be granted.

After receipt of the Rule 71(3) EPC communication the applicant did not request a correction of the description, but instead, with the letter dated 6 November 2012, expressly approved the text of the patent. German and French translations of the claims were duly filed. The fees for grant and printing were duly paid on 24 October 2012. Thus the text communicated with the Rule 71(3) EPC communication was also deemed approved under Rule 71(5) EPC. Therefore, the text in which the patent was granted corresponded to the text approved by the applicant. Consequently, no

substantial procedural violation can be identified with respect to the procedure to grant.

With regard to the earlier request dated 2 February 2011 to amend the description mentioned in the statement of grounds, the Enlarged Board of Appeal has established that if, given the opportunity to check the patent text before approving it, an applicant does not draw any errors to the attention of the examining division and thus ensure his approval is limited to the correct text, then the responsibility for any errors remaining in that text after grant should be his alone (cf. G 1/10, Reasons for the Decision, point 11). In this light, the failure of the examining division to take account of the applicant's earlier request was not a substantial procedural violation which could have rendered reimbursement equitable (cf. Rule 103(1) (a) EPC).

5. The appellant has provided no counter-arguments.
6. It follows that the request for reimbursement of the appeal fee must be refused.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated