

Internal distribution code:

- (A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 6 November 2018**

Case Number: T 2506/13 - 3.5.02

Application Number: 06820114.4

Publication Number: 1960978

IPC: G08B21/04

Language of the proceedings: EN

Title of invention:

Method and System for Guarding a Person in a Building

Applicant:

Seniortek Oy

Relevant legal provisions:

EPC R. 111(2), 103(1) (a)

RPBA Art. 11

Keyword:

Substantial procedural violation - appealed decision
sufficiently reasoned (no)

Remittal to the department of first instance - (yes)

Reimbursement of appeal fee - (yes)



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2506/13 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 6 November 2018

Appellant: Seniortek Oy
(Applicant) Karistamonkuja 3
96460 Rovaniemi (FI)

Representative: Kolster Oy Ab
(Salmisaarenaukio 1)
P.O. Box 204
00181 Helsinki (FI)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 20 June 2013
refusing European patent application No.
06820114.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Lord
Members: F. Giesen
W. Ungler

Summary of Facts and Submissions

- I. This appeal lies from the decision of the examining division to refuse European patent application no. 06 820 114.4.
- II. The decision was a so-called "decision according to the state of the file". The "Grounds for the decision" consist in substance solely of a reference to the examining division's communication of 27 May 2013, in which they had held that claim 1 of then pending main and first to third auxiliary requests lacked an inventive step.
- III. The appellant (applicant) requested with their appeal, in effect, that the impugned decision be set aside and that grant of a patent on the basis of a main request, filed together with the statement of grounds of appeal, be ordered.
- IV. In a communication pursuant to Rule 100(2) EPC, the board informed the appellant of its preliminary opinion that a substantial procedural violation was apparent in the examination proceedings because the impugned decision was not sufficiently reasoned. The board therefore intended to remit the case to the examining division and to order reimbursement of the appeal fee. The appellant was asked to state whether they wished oral proceedings to be held on the question of remittal and reimbursement of the appeal fee.
- V. In their reply, the appellant indicated that they did not wish oral proceedings to be held on the question of remittal and reimbursement of the appeal fee and stated their agreement with the board's preliminary opinion.

- VI. The wording of the independent claim of the main request and the essential arguments of the appellant regarding patentability need not be reproduced here, because they are not relevant for the present decision.

Reasons for the Decision

1. The appeal is admissible
2. *Procedural violation*
 - 2.1 According to Rule 111(2) EPC, decisions which are open to appeal shall be reasoned.
 - 2.2 In their decision according to the state of the file, the examining division makes reference to the communication of 27 May 2013. In said communication, the examining division argues, based on documents D3 to D10, what, in their own words, the skilled person's general knowledge was. It is not apparent from that communication which combination of features of the claims corresponds to what the examining division identifies to be general knowledge.
 - 2.3 The examining division then goes on to say that

"the subject-matter of the claims differs from the prior art (the general knowledge of the skilled person as set out above) only by simple configuration features. The technical effect and problem solved by these features is to adapt the general knowledge to a particular situation. As adapting this knowledge to a particular situation belongs to the normal endeavours

of the skilled person, the recognition of this problem as such does not involve an inventive step.

In order to adapt his knowledge to the particular situation given, the skilled person would readily consider to introduce the configuration features of claim 1 of the various requests, and arrive at the subject-matter of said claims without thereby exceeding his ordinary competences.

As moreover the specific configurations and conditions selected do not provide any surprising effect beyond the effects sought an [sic!] achieved in the prior art, it cannot contribute to an inventive step."

It is not apparent from this which features of the claims correspond to what the examining division identifies as being the distinguishing "simple configuration features".

- 2.4 It is therefore not derivable from the impugned decision, which features of the independent claims according to, in total, four different pending requests, the examining division considered to be disclosed in combination in the prior art and which they regarded as distinguishing features.
- 2.5 The board, and in fact any objective reader, is therefore not able to understand how the examining division arrived at their objective technical problem formulation "to adapt the general knowledge to a particular situation" without guess work. It is also not objectively determinable how the examining division arrived at their assessment of the solution.
- 2.6 Hence, the decision does not set out the logical chain of arguments upon which the conclusion and so the final verdict is based. An insufficient reasoning of a

decision is a contravention of Rule 111(2) EPC, which according to established case law represents a substantial procedural violation.

3. *Remittal*

Remittal pursuant to Article 111(1) EPC and Article 11 RPBA is considered appropriate because, due to the insufficient reasoning, neither the appellant nor the board is in a position to effectively respond to or review the decision under appeal, even though a new main request was filed in appeal proceedings. Remittal is also considered appropriate due to the fact that the compliance of the claims with the requirements of Article 84 EPC and of the amendments with Article 123(2) EPC have not yet been examined, see point 3 of the communication referred to in the impugned decision. Even if the board were to find that the new main request was admissible and in compliance with the requirements of Article 56 EPC, remittal would very likely be necessary in order to give the appellant access to two instances for these remaining points of examination.

4. *Reimbursement of the appeal fee*

The appeal is allowed insofar as the decision under appeal is to be set aside. The first instance proceedings are tainted by a substantial procedural violation. As a consequence of this substantial procedural violation the appellant cannot pursue the appeal in substance without first obtaining a fully reasoned decision. The reimbursement of the appeal fee is therefore equitable within the meaning of Rule 103(1) (a) EPC.

Order

For these reasons it is decided that:

1. The impugned decision is set aside.
2. The case is remitted to the examining division for further prosecution.
3. The appeal fee is to be reimbursed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated