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**Datasheet for the decision
of 16 December 2014**

Case Number: T 0718/14 - 3.4.02

Application Number: 11151811.4

Publication Number: 2357509

IPC: G02C5/16

Language of the proceedings: EN

Title of invention:

Eyeglass frame

Applicant:

Four Nines Co. Ltd.

Headword:

Relevant legal provisions:

EPC R. 103

Keyword:

Reimbursement of appeal fee - (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0718/14 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 16 December 2014

Appellant: Four Nines Co. Ltd.
(Applicant) 11-12 Seijo 2-chome
Setagaya-ku
Tokyo 157-0066 (JP)

Representative: Ilgart, Jean-Christophe
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 15 October 2013
refusing European patent application No.
11151811.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman A.G. Klein
Members: B. Müller
H. von Gronau

Summary of Facts and Submissions

I. Appeal had been filed on 6 December 2013 against the decision of the examining division of 15 October 2013 refusing European patent application No. 11151811.4. The sequence of events relevant to the present decision, together with the board's preliminary opinion, was set forth in the board's communication of 5 August 2014, which is reproduced in its entirety below.

1. With a communication of 21 March 2014 the formalities officer of the examining division informed the applicant about a rectification pursuant to Article 109(1) EPC. According to the communication, following the appeal of 6 December 2013 rectification was ordered, and the decision dated 15 October 2013 was set aside. The proceedings were continued.

In the communication, the box next to the following sentence was ticked:

"The request for reimbursement of the appeal fee cannot be allowed. It will be forwarded to the Board of Appeal for a decision (R. 103(2) EPC)."

The formalities officer accordingly referred the case to the board of appeal.

2. With the notice of appeal of 6 December 2013 the applicant had requested *inter alia* that "the appeal be allowed under Article 109 EPC and that the appeal fee be reimbursed under Rules 103(1)a) and 103(2)EPC."

With the statement of grounds of appeal of 27 January 2014 a main request and two auxiliary requests had been filed, all of those requests being claim requests. The second paragraph of point IV at page 4 reads: "In the event of a refusal of all the attached requests, it is requested the issuance of a Communication according to Rule 100(2) EPC or oral proceedings under Article 116 EPC."

3. The board notes that the applicant has provided no facts, evidence or arguments in support of the request for reimbursement of the appeal fee made in the notice of appeal.

A preliminary examination of the file by the board has revealed no indication to the effect that reimbursement of the appeal fee would be equitable by reason of a

substantial procedural violation, as required by Rule 103(1)(a) EPC.

4. The applicant is afforded a period of **two months** to comment on this matter. In this respect, the applicant is reminded of the provisions of Article 13(1) of the Rules of Procedure of the Board of Appeal (OJ EPO 2007, 537).

In the absence of a reply by the applicant within the two-month period, the board, in accordance with Rule 103(2), second sentence, EPC, will issue a decision on reimbursement of the appeal fee without appointing oral proceedings. The request for oral proceedings made in the statement of grounds of appeal literally covers only the three claim requests filed therewith, and not also the request for reimbursement of the appeal fee made in the notice of appeal, but not repeated in the statement of grounds.

II. No reply by the applicant was received within the aforementioned two-month period.

Reasons for the Decision

A final examination of the file by the board has revealed no indication to the effect that reimbursement of the appeal fee would be equitable by reason of a substantial procedural violation, as required by Rule 103(1)(a) EPC.

In the absence of a reply by the applicant to the board's communication of 5 August 2014 within the time limit set, the board now proceeds as announced in that communication.

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.G. Klein

Decision electronically authenticated