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Datasheet for the decision of 16 March 2015

Case Number: T 2008/14 - 3.5.07

Application Number: 05779187.3

Publication Number: 1787226

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:
System and method for reorganizing a database

Applicant:
Computer Associates Think, Inc.

Headword:
Reorganizing a database/COMPUTER ASSOCIATES THINK

Relevant legal provisions:
EPC Art. 109(1)
EPC R. 103(2)

Keyword:
Interlocutory revision
Substantial procedural violation
Reimbursement of appeal fee - competence of board of appeal

Decisions cited:
G 0003/03, T 0021/02, T 0242/05, T 1703/12

Catchword:

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Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 2008/14 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 16 March 2015

Appellant: (Applicant)	Computer Associates Think, Inc. 1 Computer Associates Plaza Islandia, NY 11749 (US)
Representative:	Dunlop, Hugh Christopher RGC Jenkins & Co. 26 Caxton Street London SW1H 0RJ (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 24 September 2013 refusing European patent application No. 05779187.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Moufang
Members: M. Rognoni
P. San-Bento Furtado

Summary of Facts and Submissions

I. An appeal was filed by the applicant against the Examining Division's decision to refuse European patent application No. 05779187.3 "on the state of the file" (referring to two communications of 26 March 2013 and 4 September 2013), which was dispatched on 24 September 2013. The applicant's requests submitted with the grounds of appeal included a main request, a first auxiliary request and a second auxiliary request, which were said to be identical to the corresponding requests on which the contested decision was based, as well as a third auxiliary request. The grounds of appeal also contained a conditional request for oral proceedings. No reimbursement of the appeal fee was requested.

II. In a communication dated 17 March 2014 the Examining Division informed the appellant that rectification pursuant to Article 109(1) EPC (interlocutory revision) was ordered and that the decision under appeal was set aside.

III. In a further communication dated 30 May 2014 the Examining Division stated that, after careful consideration of the applicant's arguments, it maintained the argumentation in its communication dated 4 September 2013 on the basis of which it had reached its (rectified) decision regarding the main, the first and the second auxiliary requests. It also expressed a negative view on the allowability of the third auxiliary request. It therefore concluded that refusal according to Article 97(2) EPC should be expected.

IV. With a letter dated 26 September 2014, the applicant inter alia requested reimbursement of the appeal fee. It submitted that a substantial procedural violation

had occurred because the Examining Division had ordered rectification of the contested decision although it fully maintained the view on which this decision had been based. This had the consequence that two appeal fees had to be paid to have the same decision and arguments considered by a board of appeal. Should the Examining Division not order reimbursement of the appeal fee, the Board of Appeal, which would have been competent under Article 21 EPC to deal with the substantive issues of the appeal if no interlocutory revision had been granted was competent to decide on the request (G 3/03, Headnote 2).

V. A formalities officer apparently acting for the Examining Division and using EPO Form 2703 referred the case to the Board of Appeal "for a decision concerning a request for reimbursement of the appeal fee after rectification of the appeal (R. 103(2) EPC)".

VI. The Board issued a communication in which it expressed the preliminary view that it had no competence to deal with the request for reimbursement of the appeal fee in the present case. It invited the appellant to indicate whether it agreed to the Board taking a decision in written proceedings. Since the Board did not receive a reply for some time, it summoned the appellant to oral proceedings. In a letter dated 12 February 2015, the appellant maintained its request that the Board should decide on the reimbursement of the appeal fee, but agreed to the Board taking a decision in written proceedings. Oral proceedings were then cancelled.

Reasons for the Decision

1. According to the established case law, the Board has no competence to deal with the request for reimbursement of the appeal fee in the present case. The review mechanism provided for in Rule 103(2), second sentence, EPC by the legislator, following the Enlarged Board's decision G 3/03 (OJ EPO 2005, 344), does not apply when the request for reimbursement of the appeal fee is filed only after interlocutory revision has been granted (see T 21/02 of 20 February 2006, reasons 5 and 6; T 242/05 of 20 September 2006, reasons 2.2 and 2.3; and T 1703/12 of 14 March 2013, reasons 3 and 4). Since at that stage no appeal procedure is pending any longer, the Board is not empowered to decide in substance on the request for reimbursement. Therefore it can only remit the case to the department of first instance.

2. The Board also has to refrain from expressing any view as to whether the Examining Division committed a substantial procedural violation by ordering rectification in the present case while maintaining the previously raised objections, whether the Examining Division itself might order reimbursement of the appeal fee in order to prevent a situation where, as the appellant maintains, two appeal fees would have to be paid "to have the same decision and arguments considered by a board of appeal", and whether the alleged procedural violation might justify reimbursement of an appeal fee in the framework of a second appeal filed against an eventual new decision of refusal.

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:

I. Aperribay R. Moufang

Decision electronically authenticated