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**Datasheet for the decision
of 21 December 2016**

Case Number: T 0123/15 - 3.5.02

Application Number: 06805932.8

Publication Number: 2074603

IPC: G08B13/196

Language of the proceedings: EN

Title of invention:
Sensor for Presence Detection

Patent Proprietor:
BEA S.A.

Opponent:
Bircher Reglomat AG

Relevant legal provisions:
EPC R. 99(1)(c), 99(2), 101(1)

Keyword:
Admissibility of appeal - appeal sufficiently substantiated
(no)

Decisions cited:
T 2077/11, T 0039/12



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Case Number: T 0123/15 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 21 December 2016

Appellant: Bircher Reglomat AG
(Opponent) Wiesengasse 20
CH-8222 Beringen (CH)

Representative: Patentanwälte und Rechtsanwalt
Weiß, Arat & Partner mbB
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Respondent: BEA S.A.
(Patent Proprietor) Parc Scientifique du Sart-Tilman,
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Representative: Puschmann Borchert Bardehle
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 20 November
2014 rejecting the opposition filed against
European patent No. 2074603 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman M. Léouffre
Members: R. Lord
R. Cramer

Summary of Facts and Submissions

- I. The present appeal lies against the decision of the opposition division, posted on 20 November 2014, rejecting the opposition against the European patent No. 2 074 603.
- II. A notice of appeal was filed by the opponent (appellant) on 16 January 2015 and the appeal fee was paid on the same date. A statement of grounds of appeal was filed on 20 March 2015. Neither the notice of appeal, nor the statement of grounds of appeal contained a request defining the subject of the appeal (Rule 99(1)(c) EPC).
- III. A reply to the statement of grounds of appeal was filed by the patent proprietor (respondent) on 31 July 2015. The respondent contested the admissibility of the appeal as the appellant had provided no reasons why the decision under appeal was alleged to be incorrect. The respondent argued also with respect to novelty that the appellant had only repeated the grounds of opposition, and that the only arguments in respect of inventive step were based on a newly filed document A7, which should not be admitted to the proceedings. The respondent submitted arguments with respect to novelty and inventive step of the claims as granted as well, and filed five auxiliary requests.
- IV. The Board issued a communication on 15 April 2016 and gave as its preliminary opinion that the statement of grounds of appeal did not meet the minimum requirements as far as its contents were concerned, so that the appeal would have to be rejected as inadmissible.

- V. With letter dated 24 August 2016 in reply to the Board's communication the appellant stated that the opposition division had not sufficiently considered some of the arguments brought forward by the appellant, and that in the statement of grounds of appeal these arguments were repeated in order to bring them to the attention of the Board. Neither in the notice of appeal, nor in the statement of grounds of appeal or in the letter of 24 August 2016 did the appellant request oral proceedings. The respondent did not request oral proceedings either.

Reasons for the Decision

1. The appeal was filed within the time limits laid down in Article 108 EPC. From the assertion in the statement of grounds of appeal that the patent is to be revoked due to lack of patentability the Board deduces that the appellant's request within the meaning of Rule 99(1)(c) EPC is to set aside the decision under appeal and to revoke the patent. The lack of a proper request within the meaning of Rule 99(1)(c) EPC is therefore as such not a reason to declare the appeal inadmissible.
2. Rule 99(2) EPC requires that the statement of grounds of appeal "shall indicate the reasons for setting aside the decision impugned". If the statement of grounds of appeal does not comply with this provision, the appeal shall be rejected as inadmissible (Rule 101(1) EPC).
3. According to board of appeal case law on Rule 99(2) EPC, if the appellant submits that the decision under appeal is incorrect, then the statement setting out the grounds of appeal must enable the board to understand immediately why the decision is alleged to be incorrect and on what facts the appellant bases its arguments,

without first having to make investigations of its own. There must be a causal relationship between the arguments in the statement of grounds of appeal and the reasons given in the decision under appeal (Case Law of the Boards of Appeal of the EPO, 8th edition 2016, IV.E.2.6.3 a)).

4. The statement of grounds of appeal discusses none of the reasons given in the decision under appeal, but is nearly identical with the notice of opposition, the only difference of substance being the citation of a new document, A7, replacing the citation of document A6. The appellant has not even redrafted the text in order to adopt the numbering of documents used in the decision under appeal.
5. Thus the statement of grounds of appeal is effectively equivalent to a simple reference to the notice of opposition. According to the established case law, merely referring to one's own submissions in the earlier proceedings cannot normally replace an explicit account of the legal and factual reasons for the appeal (Case Law of the Boards of Appeal of the EPO, 8th edition 2016, IV.E.2.6.4 a)). A statement of grounds of appeal that is identical or nearly identical to the notice of opposition can as a rule not be considered to contain arguments as to why the decision under appeal is incorrect (T 2077/11, T 39/12).
6. In the present case, in addition to an *ad verbatim* repetition of the contents of the notice of opposition a new document was cited. Apart from the fact that the introduction of this document is subject to scrutiny for admissibility under Article 114(2) EPC and Article 12(4) RPBA, and no reasons for its late filing have been given, the appellant has not established any link

between this document and the decision under appeal. Therefore the submission of this document cannot be considered as a valid reasoning on the basis of which it could be concluded that the decision under appeal is incorrect either.

7. As neither of the parties has requested oral proceedings, and both parties have been heard on the preliminary view of the Board that the appeal should be rejected as inadmissible, the Board is in a position to give its decision in writing.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



U. Bultmann

M. Léouffre

Decision electronically authenticated