

**Internal distribution code:**

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

**Datasheet for the decision  
of 3 August 2016**

**Case Number:** T 2256/15 - 3.5.02

**Application Number:** 09180265.2

**Publication Number:** 2339729

**IPC:** H02M3/158, H02M7/493, G06F1/26

**Language of the proceedings:** EN

**Title of invention:**  
Circuit system and control method thereof

**Applicant:**  
Giga-Byte Technology Co., Ltd.

**Relevant legal provisions:**  
EPC Art. 111(1)

**Keyword:**  
Remittal to the department of first instance - (yes)



**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 2256/15 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 3 August 2016**

**Appellant:** Giga-Byte Technology Co., Ltd.  
(Applicant) No. 6, Bao Chiang Rd,  
Hsin-Tien Dist.,  
New Taipei City 231 (TW)

**Representative:** Becker Kurig Straus  
Patentanwälte  
Bavariastrasse 7  
80336 München (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 6 July 2015  
refusing European patent application No.  
09180265.2 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** G. Flyng  
**Members:** H. Bronold  
W. Ungler

## **Summary of Facts and Submissions**

- I. The appeal concerns the decision of the examining division of the European patent office to refuse the patent application for the sole reason that independent claim 1 was held to lack novelty under Article 54(3) EPC with regard to EP 2 273 664 A1 (document D6).
- II. With the notice of appeal, the appellant requested that the contested decision be set aside and that a patent be granted "based on the claims as currently on file". Together with the statement setting out the grounds of appeal dated 5 November 2015, the appellant filed an amended set of claims. The statement of grounds of appeal was based on this set of claims only. The appellant further requested oral proceedings under Article 116 EPC in the event that the board does not allow the claims as currently on file.
- III. In a communication dated 20 May 2016 the board invited the appellant to confirm whether the request filed on 5 November 2015 was to be considered as the sole request. Furthermore, the board informed the appellant about their intention to remit the case to the department of first instance for further prosecution and asked the appellant to reconsider the request for oral proceedings.
- IV. In a letter dated 7 June 2016 the appellant confirmed that the request filed on 5 November 2015 was to be considered as the sole request and clarified that oral proceedings were not requested in the event that the board was minded to remit the case to the department of first instance for further prosecution.

V. The decision of the board was thereupon taken without holding oral proceedings.

VI. Claim 1 of the appellant's sole request reads as follows (underlining added by the Board to indicate features that were not present in the version of claim 1 considered in the contested decision):

"A circuit system (100) disposed in a computer motherboard, comprising:  
a processing unit (10);  
a control unit (20), electrically connected to the processing unit (10), wherein the processing unit (10) transmits a control signal to the control unit (20) according to a load current value of the circuit system (100);  
a first PWM unit (P1), electrically connected to the control unit (20); and  
a second PWM unit (P2), electrically connected to the control unit (20);  
wherein the circuit system (100) is characterized in that: the control unit (20) alternatively enables the first and second PWM units (P1 and P2) for a designated period according to the control signal, the first and second PWM units (P1, P2) are incorporated with each other as a multiphase PWM module, and when one of the first and second PWM units (P1, P2) breaks down the control unit (20) disables the broken down PWM unit."

VII. In so far as they are relevant to the present decision, the appellant's arguments may be summarised as follows:

Contrary to the reasoning of the examining division in the contested decision, the elements PWM1 to PWM4 disclosed in document D6, figure 3, did not correspond to the first and second PWM units P1, P2 of claim 1.

Said elements according to document D6 were utilised to trigger the controller of document D6 contrary to being triggered by said controller, as claimed in claim 1. Therefore, the elements PWM1 to PWM4 of D6 did not correspond to the respective features of claim 1.

## Reasons for the Decision

1. The appellant objects to the finding of the examining division in the contested decision that elements PWM1 and PWM2 disclosed in figure 3 of document D6 correspond to the first and second PWM units P1 and P2 of claim 1.

According to claim 1, the control unit alternatively enables the first PWM unit P1 and second PWM unit P2 for a designated period according to the control signal.

2. The board is not persuaded by the reasoning of the examining division that paragraph [0016] of document D6 discloses that the control unit (20) alternatively enables the elements PWM1 and PWM2 for a designated period according to the control signal. Neither paragraph [0016] of document D6 nor the remainder of the specification of D6 discloses that the controller alternatively enables elements PWM1 and PWM2 for a designated period. Indeed, the elements PWM1 and PWM2 are only shown in the drawings of D6 and the written description does not even mention them. Moreover, no interaction of elements PWM1 and PWM2 with the PWM device (210, 310) and the controller (220, 312) is described in document D6. Consequently, it is a matter of pure speculation what the function of elements PWM1 and PWM2 might be. Therefore, elements PWM1 and PWM2 can not correspond to the first PWM unit and second PWM unit as they are defined in claim 1. Therefore, the reasoning provided in the contested decision cannot substantiate the alleged lack of novelty.

3. Further to the above, the Board can find no disclosure anywhere in D6, let alone in the passages cited in the contested decision, that when one of the elements PWM1 to PWM4 breaks down the controller 312 disables it. For this reason alone the examining division should have rectified its decision under Article 109(1) EPC.
4. As the sole reason given for the refusal is thus devoid of merit, the Board decides to set aside the contested decision.
5. Furthermore, given that the contested decision only considered the question of novelty under Article 54(3) EPC, the Board does not consider it appropriate in the circumstances to make a final decision on the patentability of the present set of claims, in particular on novelty under Article 54(2) EPC and on inventive step under Article 56 EPC. Under these circumstances the appellant's request for grant of a patent cannot be allowed. Consequently, the case is to be remitted to the department of first instance according to Article 111(1) EPC.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



U. Bultmann

G. Flyng

Decision electronically authenticated