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**Datasheet for the decision
of 11 November 2019**

Case Number: T 2687/16 - 3.5.04

Application Number: 11761730.8

Publication Number: 2619988

IPC: H04N21/218

Language of the proceedings: EN

Title of invention:

A PORTABLE VIDEO-TELECOMMUNICATION DEVICE, DATA TRANSMISSION METHOD, IN PARTICULAR AUDIO/VIDEO DATA, AND THEIR APPLICATION

Applicant:

Zuza Pictures Sp. Z O.O.

Headword:

Relevant legal provisions:

EPC Art. 108 sentence 3

EPC R. 99(2), 101(1)

RPBA Art. 15(2)

Notice of the Vice-President of Directorate General 3 of the European Patent Office dated 16 July 2007

Keyword:

Admissibility of appeal - appeal sufficiently substantiated
(no)

Request for change of date of oral proceedings (refused)

Decisions cited:

T 0899/13

Catchword:



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Case Number: T 2687/16 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 11 November 2019

Appellant: Zuza Pictures Sp. z o.o.
(Applicant) Ul. Solankowa 23
02-939 Warszawa (PL)

Representative: Jedrzejewski, Michal
Kancelaria prawnopatentowa
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 8 August 2016
refusing European patent application
No. 11761730.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman C. Kunzelmann
Members: M. Paci
G. Decker

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing European patent application No. 11761730.8, published as international patent application WO 2012/018271 A1.
- II. The documents cited in the decision under appeal included the following:

D1: anonymous: "Samsung Galaxy S", 4 August 2010, XP002663971
D2: US 2009/163185 A1
D3: US 2008/112315 A1
D4: US 2009/019176 A1
- III. The decision under appeal was based on the grounds that claims 1 and 11 did not meet the requirements of Article 123(2) EPC; claim 11 did not meet the requirement of clarity of Article 84 EPC; the subject-matter of claim 1 did not involve an inventive step in view of prior-art document D1; and the subject-matter of claims 11, 15 and 16 did not involve an inventive step in view of prior-art documents D2 and D4.
- IV. The appellant filed a four-page statement of grounds of appeal in which it requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims filed with the letter dated 17 August 2015, i.e. the claims underlying the decision under appeal.
- V. The board issued a summons to oral proceedings together with a communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA, OJ EPO 2007, 536). It gave its preliminary opinion that the

statement of grounds of appeal did not meet the requirements of Article 108, third sentence, EPC and Rule 99(2) EPC and that the appellant should thus expect the appeal to be rejected as inadmissible pursuant to Rule 101(1) EPC.

- VI. By fax dated 5 November 2019 received on the same day, the appellant informed the board that it could not attend the oral proceeding to be held on 11 November 2019 due to a Polish national holiday on that day and asked for a new date to be set, but no earlier than December 2019.
- VII. In a communication sent by fax on 6 November 2019, the board informed the appellant that its request for a change of date of oral proceedings was refused because it had not been filed as far in advance of the appointed date as possible.
- VIII. The board held oral proceedings on 11 November 2019. As announced, the duly summoned appellant did not attend.

At the oral proceedings, the chairman noted that the appellant had requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims filed with the letter dated 17 August 2015.

At the end of the oral proceedings, the chairman announced the board's decision.

Reasons for the Decision

Admissibility of the appeal

1. In its communication under Article 15(1) RPBA, the board informed the appellant of its provisional opinion that the statement of grounds of appeal did not meet the requirements of Article 108, third sentence, EPC and Rule 99(2) EPC and that the appellant should thus expect the appeal to be rejected as inadmissible pursuant to Rule 101(1) EPC. The board wrote:

"Admissibility of the appeal

4. Under Article 108 EPC, third sentence, a statement setting out the grounds of appeal shall be filed within four months after the date of notification of the decision in accordance with the Implementing Regulations. Under Rule 99(2) EPC, the appellant shall indicate in the statement of grounds of appeal the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based. In the absence of such a statement, the appeal shall be rejected as inadmissible (Rule 101(1) EPC).

5. According to the established case law of the boards of appeal, the statement of 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 (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, IV.E.2.6.3). Where there are several independent reasons for the decision to refuse the

application, each of the reasons must be addressed in the statement of grounds of appeal (see decision T 899/13, point 2.1 of the Reasons).

The present statement of grounds of appeal is a four-page long list of general considerations about added subject-matter (Article 123(2) EPC), inventive step (Article 56 EPC) and clarity (Article 84 EPC) which reads like a patchwork of passages taken, e.g., from a textbook on European patent examination or the Guidelines for examination at the EPO. There is hardly anything in the statement of grounds of appeal which is specific to the present application and addresses the reasons given in the impugned decision. Claims 1, 11, 15 and 16 and prior-art documents D1, D2, D3 and D4 are mentioned, but their content is not discussed. The appellant states in the statement of grounds of appeal that the reasons given in the decision are incorrect, but no specific explanation is given as to why. After reading the statement of grounds of appeal, the board has no idea why the appellant considers any of the reasons for the refusal, let alone all of them, to be incorrect.

6. For the above reasons, the board is of the view that the statement of grounds of appeal does not meet the requirements of Article 108 EPC, third sentence, and Rule 99(2) EPC. Accordingly, the appellant should expect the appeal to be rejected as inadmissible pursuant to Rule 101(1) EPC."

2. The appellant did not reply in substance to the above objections.
3. After deliberation on the case in the oral proceedings of 11 November 2019, the board affirms the above view,

which it expressed in the communication under Article 15(1) RPBA, that the statement of grounds of appeal does not meet the requirements of Article 108, third sentence, EPC and Rule 99(2) EPC.

Request for a change of date of oral proceedings

4. By letter dated 5 November 2019, the appellant informed the board that it would not be attending the oral proceedings on 11 November 2019 due to a Polish national holiday on that day and requested that a new date be set for the oral proceedings, but no earlier than December 2019.
5. According to the Notice of the Vice-President of Directorate General 3 of the European Patent Office dated 16 July 2007 concerning oral proceedings before the boards of appeal of the EPO (OJ EPO 2007, Special edition No. 3, 115), the request by a party to cancel oral proceedings and set another date for it must be filed "as soon as possible" (see point 2 of the Notice).
6. Similarly, pursuant to Article 15(2) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536), a request for a change of the date of oral proceedings must be filed "as far in advance of the appointed date as possible".
7. In the present case, according to the signed advice of delivery, the appellant received the summons to oral proceedings on 28 August 2019. However, the appellant waited until 5 November 2019, i.e. only six days before the date of the oral proceedings, to request a change of date. Since the appellant should have known all along that 11 November 2019 is a Polish national

holiday, the appellant's request cannot be regarded as filed "as soon as possible" or "as far in advance of the appointed date as possible".

8. For the above reasons, the board refused the appellant's request for a change of date of oral proceedings.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



K. Boelicke

C. Kunzelmann

Decision electronically authenticated