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Datasheet for the decision of 12 July 2018

Case Number: T 0097/18 - 3.5.07

Application Number: 05855046.8

Publication Number: 1866797

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:
System and method for searching for static data in a computer investigation system

Applicant:
Guidance Software, Inc.

Headword:
Missing statement of grounds/GUIDANCE SOFTWARE

Relevant legal provisions:
EPC Art. 108
EPC R. 99(2), 101(1)

Keyword:
Admissibility of appeal - missing statement of grounds

Decisions cited:
T 2434/09, T 1402/13

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Beschwerdekammern

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Case Number: T 0097/18 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 12 July 2018

Appellant: (Applicant)	Guidance Software, Inc. 215 N. Marengo Avenue 2nd Floor Pasadena CA 91101 (US)
Representative:	Patentanwälte Olbricht Buchhold Keulertz Partnerschaft mbB Bettinastraße 53-55 60325 Frankfurt am Main (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 2 August 2017 refusing European patent application No. 05855046.8 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairman	R. Moufang
Members:	M. Jaedicke
	R. de Man

Summary of Facts and Submissions

I. The appeal is directed against the decision of the Examining Division to refuse European patent application No. 05855046.8 announced in oral proceedings on 30 May 2017, the written reasons of which were posted on 2 August 2017.

II. The applicant (appellant) filed a notice of appeal on 30 August 2017 and paid the appeal fee on the same day.

III. By communication of 16 January 2018, sent by registered letter with advice of delivery (the receipt of which was confirmed by the appellant on 18 January 2018), the Registry of the Board informed the appellant that it appeared from the file that the written statement of grounds of appeal had not been filed, and that it was therefore to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC. The appellant was informed that any observations had to be filed within two months of notification of the communication.

IV. No reply was received within the deadline set.

V. In a communication sent out on behalf of the Examining Division the appellant was informed that the renewal fee for the 13th year fell due on 31 December 2017 and might still be validly paid up to the last day of the sixth calendar month following the due date.

Reasons for the Decision

1. No written statement setting out the grounds of appeal was filed within the time limit provided by Article 108, third sentence, EPC in conjunction with Rule 126(2) EPC. In addition, neither the notice of appeal nor any other document filed contains anything that could be regarded as a statement of grounds pursuant to Article 108 EPC and Rule 99(2) EPC. Therefore, the appeal has to be rejected as inadmissible (Rule 101(1) EPC).

2. The Board is not prevented from taking the present decision by the fact that the application might be deemed to be withdrawn due to non-payment of the renewal fee with additional fee. While *ex parte* appeal proceedings are usually closed without a substantive decision when the department of first instance has informed the appellant that the application is deemed to be withdrawn due to non-payment of a renewal fee ("loss-of-rights communication") and when the appellant has not made use of a means of redress against this finding, there is no automatism in this regard and exceptions are possible in special circumstances (see T 2434/09 of 2 November 2011, reasons 4 and 5). The Board does not share the divergent view expressed in decision T 1402/13 of 25 February 2016, reasons 3). In the present case, the department of first instance did not yet make a finding that the application was deemed to be withdrawn and the appellant could later theoretically seek redress against such a finding. In these circumstances, the Board does not see any need to refrain from taking the present decision, which finally disposes of the appeal by rejecting it as inadmissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar: The Chairman:

I. Aperribay R. Moufang

Decision electronically authenticated